

05-509 JUL 6 2005

NO. 04-3452

OFFICE OF THE CLERK

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**IN THE SUPREME COURT  
OF THE UNITED STATES**

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In Re: Evelyn L. Johnson,

Petitioner.

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**ON PETITION**

**FOR AN EXTRAORDINARY WRIT**

**OF MANDAMUS**

**AND/OR**

**PROHIBITION**

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**BRIEF FOR PETITIONER**

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31 Aug 2005  
Date

*Evelyn L. Johnson*

Evelyn L. Johnson

Pro Se Petitioner

6241 S. Skyline Drive

Douglasville, GA 30135

(770) 489-0343

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## QUESTION(S)

A. Whether the Petitioner, who was a 21+ year-tenured and a former federal-civil-service employee, did not have legal rights and protection under *Title VII of the Civil Rights Act of 1964* due to intentional discrimination and disparate treatment, and the due process law of the Constitution, because she was an employee of the U. S. judiciary. 42 U.S.C. § 2000e et seq.

B. Whether tenured federal-civil-service government employees employed by the U.S. courts, the employing office, which is under the jurisdiction and direction of the Administrative Office of the U.S. Courts (AO), the Agency, are entitled to equal protection under law and entitled to seek relief on damages brought under federal civil service, civil rights, and Constitutional laws. 42 U.S.C. § 2000e et seq.; 2 U.S.C. § 1434, 5 U.S.C. § 706(k). (E at 2-3).

C. Whether the three-judge merits-panel of the Federal Circuit Court of Appeals erred when it did not address the merits of the case before the Court, failed to do its legal responsibility, obligation, and ultimate duty of following the law in adjudicating the case. 5 U.S.C. § 2302(b)(1); 5 U.S.C. §§ 7512-7512(a)(2). 28 U.S.C. § 1295(a)(9). (Id.).



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B. Whether tenured federal-civil-service government employees employed by the U.S. courts, the employing office, which is under the jurisdiction and direction of the Administrative Office of the U.S. Courts (AO), the Agency, are entitled to equal protection under law and entitled to seek relief on damages brought under federal civil service, civil rights, and Constitutional laws. 42 U.S.C. § 2000e et seq.; 2 U.S.C. § 1434, 5 U.S.C. § 706(k). (E at 2-3).

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## **LIST OF PARTIES**

### **Staff Attorneys' Office**

#### **U.S. Court of Appeals for the Eleventh Circuit**

1. Naomi G. Godfrey, Senior Staff Attorney
2. Karen B. Sinyard, Office Manager
3. Sara Gilibert, Manager for Recruiting & Retaining
4. Norman E. Zoller, Circuit Executive, Naomi Godfrey's  
direct supervisor
5. George Watson, court automation employee
6. Mori Irvin, Judicial Division Manager
7. Brian Schoemaker, Supervising Staff Attorney

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## TABLE OF CONTENTS

CONTENTS	PAGE(S)
Question(s)	i
List of Parties	ii
Table of Contents	iii-vi
Table of Authorities	vii-x
I. Jurisdiction	1-2
II. Statement of the Case	2
A. Title VII of the Civil Rights Act of 1964 Standard	2
B. Merits	2, 3
III. Background	3
A. Case and Petitioner's Background	3-4
B. Employing Office's Reason for the Retaliatory Termination	5
C. Petitions for Review (MSPB, Board, Federal Circuit Court of Appeals)	6
1. Timeliness Petition for Review with the MSPB	6
2. Timeliness Petition for Review with the Fed. Cir. Court	6-8

## TABLE OF CONTENTS

CONTENTS	PAGE(S)
D. Handling and Processing of the Case	8
E. Petitioner's Allegations	9
F. Material Evidence	9
G. Petitioner's Due Process Right	10
IV. Argument	10
A. 2003 EDR Complaint—Retaliatory Termination Due to the Filing of the 2002 EDR Complaint	10
1. Title VII of the Civil Rights Act of 1964	10-12
2. Motion to Dismiss and Congressional Accountability Act of 1995	12-13
3. Competitive Service. v. Excepted Service	13-17
4. Definition of "Agency," "Executive and Judicial Branches" of the Government & "Employee"	17-19
5. Preponderance of Evidence Standard	19-20

## TABLE OF CONTENTS

CONTENTS	PAGE(S)
6. The <u>Hartman</u> Case	20-22
7. Intentional Discrimination and Disparate Treatment Standard	22-24
8. Continuing Violation Doctrine	24-26
<b>B. 2003 Adverse Personnel Action</b>	
— Involuntary Termination	26
1. Respondents' After-the-Fact Justification	26
2. Adverse Action Hearing October 29, 2003	26-27
<b>C. 2002 EDR Complaint—Intentional Discrimination and Disparate Treatment Under Title VII of the Civil Rights Act of 1964</b>	27
1. 2002 EDR Hearing September 25-26, 2002	27
2. Prohibited Personnel Practice	27-28
<b>V. Reasons for Granting the Writ</b>	28
A. Conflict of Interest	28
B. Federal Circuit Court of Appeals	

## **TABLE OF CONTENTS**

<b>CONTENTS</b>	<b>PAGE(S)</b>
Relationship with the Administrative of the U.S. Courts, Petitioner's Agency	28-29
C. Congressional Accountability Act of 1995	29
D. Dismissal of the Case for Lack of Jurisdiction	29-30
VI. Conclusion	30
VII. Damages and Relief	30

TABLE OF AUTHORITIES

Case	Page(s)
<u>Furnco Construction Corp. v. Waters</u> , 438 U.S. 567, 577 (1978)	23, 24
<u>Hartman v. MSPB</u> , 77 F.3d 1378, 1380 (5 <sup>th</sup> Cir. 1996)	20, 21
<u>McDonnell Douglas Corp. v. Green</u> , 411 U.S. 792, 802 (1973)	23, 24
<u>National Railroad Passenger Corp.</u> <u>v. Morgan</u> , 122 S.Ct. 2061 U.S. 4214 (2002)	26
<u>Texas Department of Community</u> <u>Affairs v. Burdine</u> , 450 U.S. 248, 256 (1981)	23
<b>Amendments to the Constitution of the United States</b>	
Article III, § 2 of the Constitution	1, 2, 28
Amendment IV, § 1 of the Constitution	2, 3, 9, 10, 26, 30



## TABLE OF AUTHORITIES

Statutes	Page(s)
2 U.S.C. § 1302	12, 18, 28, 29
2 U.S.C. § 1317	4, 5, 8, 11, 27, 28
2 U.S.C. § 1434	i, 2, 5, 9, 11 13, 18, 29
5 U.S.C. § 212.301	15, 16
5 U.S.C. § 706 (k)	i, 12, 20, 28, 30
5 U.S.C. § 1221(a)	21
5 U.S.C. § 2101(a)	13
5 U.S.C. § 2102(a)(2)	14, 15
5 U.S.C. § 2302(a)(2)(A)	21
5 U.S.C. § 2302(b)(1)	27
5 U.S.C. § 4303	27
5 U.S.C. § 5596	30
5 U.S.C. § 7511 (a)(1)	13, 17, 18, 20
5 U.S.C. § 7512	2, 27
5 U.S.C. § 7701(c)(2)	14, 19
5 U.S.C. § 7703(a)(2)	8
5 U.S.C. § 8331	9
5 U.S.C. § 8347(d)(1)-(2)	9

TABLE OF AUTHORITIES

Statutes	Page(s)
5 U.S.C. § 8461(e)(1)	9
28 U.S.C. § 602	22
28 U.S.C. § 604	22
28 U.S.C. § 1295(a)(9)	i, 2
28 U.S.C. § 1651(a)	1, 2, 28
42 U.S.C. § 1981(a)(1)	3, 11, 30
42 U.S.C. § 2000e et seq.	i, 2, 3, 11, 12, 20
42 U.S.C. § 2000e -2(a)	22
42 U.S.C. § 2000e -2(b)	29
42 U.S.C. § 2000e-5(g)(1)	11, 30
Civil Rights Act of 1991	3
Civil Service Reform Act of 1978	24, 27
Family Medical Leave Act	3
<u>Title VII of the Civil Rights</u>	
<u>Act of 1964</u>	i, 1, 2, 3, 10, 11, 12, 22, 23, 24, 25, 27
Regulations	Page(s)
5 C.F.R § 1201.36	26

TABLE OF AUTHORITIES

<b>Regulations</b>	<b>Page(s)</b>
5 C.F.R § 1201.113(c)	14
5 C.F.R § 1201.36	26
5 C.F.R § 1201.56	19
5 C.F.R 212.101	15, 19
5 C.F.R § 315.501	16
5 C.F.R § 315.502	16
AOUSC Model EDR Plan	18
Fed.Cir.R.15(c)(2)	7
<b>Other</b>	
<b>Section 10 of the Eleventh Circuit</b>	
<b>Court of Appeals Employment</b>	
Dispute Resolution Plan. § 1	18

**NO. 04-3452**  
**OPINIONS BELOW**

<b>Description</b>	<b>Judge(s)</b>	<b>No of Pages</b>	<b>Date Filed in Court</b>
<b>2003 EDR COMPLAINT</b>			
U.S. Court of Appeals for the Federal Circuit, Opinion	Newman, Laurie, Linn	7	04/06/2005
U.S. Court of Appeals for the Federal Circuit, Order	Horbaly	1	02/09/2005
U.S. Court of Appeals for the Federal Circuit, Order	Michel, Bryson, Prost	2	01/26/2005
Respondent's (MSPB) Motion For Leave To File Brief Out Of Time	Morrow, Board's Counsel	4	12/30/2004
Respondent's (MSPB) Informal Brief	Morrow, Board's Counsel	12	12/20/2004
Full Board's Final Decision (attached to A-6)	McPhie, Marshall	7	07/12/2004
Regional MSPB's Initial Decision (attached to A-6)	Cummings	11	10/09/2003

**NO. 04-3452**  
**OPINIONS BELOW**

<b>Description</b>	<b>Judge(s)</b>	<b>No of Pages</b>	<b>Date Filed in Court</b>
U.S. Court of Appeals for the Federal Circuit, Order	Horbaly	1	11/18/2004
Respondent's (AO) Motion To Recaption	Baunach, AO's Counsel	8	11/09/2004
U.S. Court of Appeals for the Federal Circuit, Order	Gajarsa	2	11/08/2004
Order from the Chief, U.S. Court of Appeals 11 <sup>th</sup> Circuit, letters, and papers related to the Order	Edmondson	12	01/16/2004
Magistrate Judge Brill's final decision on supposedly "2003 EDR Complaint Hearing" held on December 8, 2003	Brill	12	12/17/2003
Petitioner's MSPB form for the initial filing of the 2003 EDR complaint	Petitioner	31	09/06/2003

**NO. 04-3452**  
**OPINIONS BELOW**

<b>Description</b>	<b>Judge(s)</b>	<b>No of Pages</b>	<b>Date Filed in Court</b>
Response to Petition for Review (AO)	Kattan, AO's Counsel	7	12/04/2003
<b>ADVERSE PERSONNEL ACTION</b>			
Response from the Chief, U.S. Court of Appeals 11 <sup>th</sup> Circuit to Petitioner's Former Counsel	Edmondson Rivera	3	11/21/2003 11/19/2003
Magistrate Judge Brill's Decision on "Adverse Personnel Action"	Brill	16	11/06/2003
Letter from the Chief of the Eleventh Circuit to Mag. Judge Brill	Edmondson	1	08/28/2003
Judge Brill's letter to counsels of both parties	Brill	1	10/14/2003

**NO. 04-3452**  
**OPINIONS BELOW**

<b>Description</b>	<b>Judge(s)</b>	<b>No of Pages</b>	<b>Date Filed in Court</b>
Judge's letter to both counsels regarding the hearing	Brill	1	09/15/2003
Judge Edmondson's letter to Judge Brill Petitioner counsel's letter to EDR coordinator	Edmondson	1	08/28/2003
Letter from J. Brill to Petitioner's counsel in Washington, DC	Brill	2	07/23/2003
<b>2002 EDR Complaint</b>			
First set of Orders from Chief Judge Edmondson affirming Mag. Judge King's decision on the 2002 EDR complaint (for the judicial council)	Edmondson	3	04/24/2003

**NO. 04-3452**  
**OPINIONS BELOW**

<b>Description</b>	<b>Judge(s)</b>	<b>No of Pages</b>	<b>Date Filed in Court</b>
Second set of Orders from Chief Edmondson related to the 2002 EDR complaint with letter dated 03/17/2003 (revised)	Edmondson	4	03/12/2003
First set of Orders from Chief Judge Edmondson related to the 2002 EDR complaint with letter dated 03/13/2003	Edmondson	4	03/12/2003
Magistrate Judge King final decision on 2002 EDR complaint	King	57	11/14/2002



**I. Jurisdiction:** A) The jurisdiction of this Court is invoked under 28 U.S.C. § 1651(a). The case was originally filed on March 12, 2002. (App. C-10). Petitioner timely filed petitions for review, and the court below entered its final order on April 6, 2005, dismissing the case for lack of jurisdiction. *Article III, § 2 of the U.S. Const.* (E at 1).<sup>1</sup>

B) The Petitioner, who was a 21+-year-tenured former judiciary civil-service employee, was retaliatorily fired by the employing office after Petitioner filed an anti discrimination complaint under Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000(e)). Although the case had been through the administrative process, the case was never reviewed on its entirety, never considered substantial material evidence to substantiate the legality of all allegations, never considered the merits of the case, and most of all, was never given the opportunity for an impartial judicial review, which compromised and jeopardized

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<sup>1</sup> Appendix \_\_\_ at \_\_\_ will be cited as ("letter & no. at page no.")

Petitioner's entitlement to vested federal employment benefits. (A-1, A-7, A 14-18). Because adequate relief cannot be obtained from any other court, the writ will be in aid of the Court's appellate jurisdiction since the Merit Systems Protection Board ("Board") and the courts below had decided a significant federal question that has imperative public importance, especially to the tenured federal employees of the judiciary. *Article III, § 2 of the Constitution; Amendment XIV § 1 of the Constitution; 28 U.S.C § 1651(a). (E at 1).*

**II. Statement of the Case: A) Title VII of the Civil Rights Act of 1964 Standard.** This case involves the appropriate standard for cases of intentional discrimination under *Title VII of the Civil Rights Act of 1964*. The federal government, which is the largest employer in the nation, will be affected by the outcome of this case in its dealings with the federal judiciary employees' discrimination complaints. *2 U.S.C. § 1434; 42 U.S.C. § 2000e et seq. (E at 2, at 9).*

**B) Merits.** On the merits, this case presents the question whether the Petitioner is entitled for relief on damages sustained, due to allegations of intentional

discrimination and disparate treatment because of non promotion on several instances for many years. Petitioner originally and timely filed the case for violation of *Title VII of the Civil Rights Act of 1964* on the basis of race, national origin, color, age, and sex. Other alleged federal employment violations: 1) employing office engaged in unlawful employment practice by engaging in a wide range of prohibited personnel practice several times; 2) retaliation; 3) reprisal; 4) hostile work environment; 5) work harassment via computer impeding Petitioner's work; 6) Federal Medical Leave Act (FMLA); 7) abuse of discretionary authority affecting terms, conditions, and privileges of employment; 8) continuing retaliatory actions while Petitioner was engaged in federally protected activity; 9) retaliatory termination; and 10) violation of due process right of the Constitution. (See C-9). *Title VII of the Civil Rights Act of 1964; Civil Rights Act as Amended in 1991 section 102(b) of Title VII; 42 U.S.C. § 2000e et. seq.; Amend. IV; § 1*

**III. Background: A) Case and Petitioner's Background.** Pro Se Petitioner, Evelyn L. Johnson ("Petitioner"), a 52-year-old female former federal government employee, of Asian

descent, was formerly employed by the Staff Attorneys' Office (SAO), Eleventh Circuit U.S. Court of Appeals. Petitioner filed a discrimination and disparate treatment complaint under Title VII on March 12, 2002, through the employing office's Employment Dispute Resolution (EDR) Plan when she was denied the position to which she was appointed, to a higher grade and its corresponding benefits, not once, but several times. Ten days after filing the complaint, Petitioner was subjected to numerous retaliatory actions, harassment, and hostile work environment. <sup>2</sup> 2 U.S.C. § 1317. (Appendix generally). The retaliatory actions continued through the day the employing office retaliatorily terminated Petitioner's tenured (21+ years, 14 ½ years of which were spent with the employing office, (SAO)) federal employment on June 20, 2003, without good cause and against her will. (A 13-20; B 1-10; C 1-11). The Eleventh Circuit Court of Appeals dismissed the case on procedural grounds, and the MSPB Board ("Board") and the Federal Circuit Court of Appeals dismissed the case for lack of

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<sup>2</sup> Complete record substantiating the legality of all allegations in the complaint are located in 12 folders, under the custody of the clerk, U.S. Court of appeals for the Federal Circuit.

jurisdiction.

**B) Employing Office's Reason for the Retaliatory Termination.** This case does not involve merely involuntary termination due to SAO's allegations of *"insubordinate behavior, unsatisfactory work, and inappropriate conduct in the discharge of responsibilities."* (Id.). The employer's allegations, which were supported by Petitioner's evidence, were after-the-fact justifications, documenting Petitioner's impending involuntary/retaliatory termination while the Petitioner was involved in federally protected activity. Dates on the documentary evidence Respondents had provided will confirm the Petitioner's allegations that Respondents manufactured those papers while Petitioner was involved in the EDR process, in retaliation to Petitioner's filing of the EDR complaint.<sup>3</sup> This case involves convoluted, inextricably-intertwined facts, federal employment issues violating anti discrimination law, violation of other federal employment statutes, and protection of Petitioner's vested federal employment rights. 2 U.S.C. §§ 1317, 1434. (E at 2).

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<sup>3</sup> Compare ROA Vol. 4 and App. D, Respondents' Exhibits, to Petitioner's ROA Vols. 1-12 and Appendix generally.

C) Petitions for Review with the Merit Systems Protection Board ("MSPB"), MSPB Board ("Board"), and Federal Circuit Court of Appeals ("Federal Circuit"): 1) Timeliness Petition for Review with the Board. Petitioner timely filed a petition for review (captioned Evelyn L. Johnson, Petitioner v. Administrative Office of the United States Courts ("AO"), Respondent, with the full Board on November 5, 2003 (A-9). On December 4, 2003, the Agency, through its counsel, Susan Kattan, filed a response to the Board recommending to dismiss the appeal for lack of jurisdiction. On July 12, 2004, through its Clerk, the full Board vacated and dismissed (A-7) the case for lack of jurisdiction MSPB's initial decision of October 8, 2003 (A-8), without addressing the merits of the case. (A 7-8).

2) Timeliness Petition for Review with the Federal Circuit Court of Appeals. Petitioner timely filed a petition for review with the Federal Circuit on September 9, 2004. (A-13; A-11; A-12 at 2-3; A-18). On November 9, 2004, the Agency (AO), through its counsel, Phyllis Jo Baunach, from the Department of Justice Civil Division, filed a "Motion to Recaption" (A-11) the case to be captioned "Evelyn L.

Johnson v. MSPB," to the Federal Circuit Court of Appeals stating that "[t]he employing agency is designated as the respondent when the Board reaches the merits of the underlying case." (A-12 at 2). On November 18, 2004, the Federal Circuit Court of Appeals granted the motion (A-12 at 3). On December 20, 2004, the now Respondent MSPB, through its counsel filed an informal brief (App. A-6), but was rejected by the Federal Circuit for untimeliness. MSPB's counsel filed a "Motion for Leave to File Brief Out of Time," on December 30, 2004 (A-5), Petitioner objected (A-4), but the motion was granted for the MSPB on January 26, 2005 (A-3). Under Fed.Cir.R. 15(c)(2), the Board's counsel contended that, "*Ms. Johnson stated that she was seeking only review of the Board's dismissal of her case for lack of jurisdiction.*" (A-6 ¶5 at 13-14; compare, A-12, 17). Petitioner argues she included a continuation page to the form, which Petitioner avers that "*this case has not been reviewed on its entirety, on its merits, and was never given an opportunity for an appropriate and impartial judicial review.*" <sup>4</sup> (A-13, 17). Petitioner seeks

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<sup>4</sup> Petitioner's Fed.Cir.R. 15(c) Statement Concerning Discrimination Form and its continuation page (A-13), MSPB Appeal Form (A-17), which identified all outstanding issues and facts, and was filed at the outset of filing this case with the MSPB on September 9, 2003.



review of the case on its entirety with the Federal Circuit, as directed by the Board's Order. Compare discrepancy on Board's final decision (A-7 at 9 ¶ 11) and AO's motion to recaption (A-11 at 3), and Federal Circuit Order (A-12). On April 6, 2005, the Federal Circuit rehashed the Board's decision, was diverted without consideration of the merits and affirmed the Board's decision (A-1, A 6-7 & A-19; compare with A-12, *"The employing agency is designated as the respondent when the Board reaches the merits of the underlying case."*)

D) Handling and Processing of the Case. The Court will find the manner in which the courts below and the Board handled and processed this case, and how they arrived at their judgment of dismissing the appeal for lack of jurisdiction. *"The respondent [agency through its counsel] and the Board agree that the MSPB's dismissal of Ms. Johnson's appeal for lack of jurisdiction is not a final order or decision on the merits of the underlying personnel action, 5 U.S.C. § 7703(a)(2)." (A-11 at 3). "The employing agency is designated as the respondent when the Board reaches the merits of the underlying case." 2 U.S.C. § 1317. (A-12 at 2-3).*



**E) Petitioner's Allegations.** The employing office, Staff Attorneys' Office ("SAO"), Eleventh Circuit Court of Appeals, twisted facts and issues, picked and chose the issue they wanted to address, without addressing true issues and allegations in the case. Petitioner asserted that due to the complex and serious nature of the case, the belligerent and reckless actions of the Respondents, the courts below and the Board's decision compromised and jeopardized the integrity and ethical conduct of the judicial system. (A-1, A-7, A-9, A 11-12, A 14-20). *Amend. XIV.* What SAO has done to the Petitioner was wrong, unlawful, malicious, and willful with evil intent that jeopardized Petitioner's vested federal employment entitlement to employee benefits, i.e., health and life insurance, components of retirement under Federal Employees Retirement System (FERS), i.e., TSP, social security, and federal retirement fund, etc. 5 U.S.C. §§ 8331, 8347(d)(1)-(2), 8461(e)(1). *Amendment XIV § 1 of the U.S. Constitution; 2 U.S.C. § 1434.* (E at 1-2).

**F) Material Evidence.** Petitioner filed material evidence and proved the case by a preponderance of evidence. (ROA, Vols. 1-12; Appendix). The lower courts and the full

Board's actions, however, showed not only unfair judgment but also abuse of power and authority, and manifested injustice.

G) Petitioner's Due Process Right. Petitioner also alleged violation of her due process constitutional right due to inappropriate handling and processing of Petitioner's 2003 EDR/EEO complaint she on July 16, 2003, (B 1-10). It was the retaliatory action, which was in retaliation to her filing of 2002 EDR complaint. (A 14-19). The employing office disposed of the entire employment and discrimination complaint at the December 8, 2003, hearing without appropriate notice to the Petitioner, which constitutes violation of the Petitioner's due process right. *Amendment XIV, § 1, U.S. Constitution.* (ROA Vol. 3, Pet.'s Motions; A 14-19).

IV. Argument: A) 2003 EDR Complaint—Retaliatory Termination Due to the Filing of the 2002 EDR Complaint.

1) Title VII of the Civil Rights Act of 1964. The courts below and Board erred in summarily dismissing the intentional discrimination and disparate treatment complaint under Title VII for lack of jurisdiction. (A-1; A 6-7, A-11, A-19;

compare with A-12 at 2 ). Petitioner brought the action under *Title VII of the Civil Rights Act of 1964* of continuing intentional discrimination and disparate treatment, due to violation of anti discrimination law, reprisal, continuing retaliatory actions while the Petitioner was engaged in protected activity, prohibited personnel practice such as non promotion, violation of her due process right, and involuntary/~~retaliatory~~ termination. 42 U.S.C. § 2000e et seq. Petitioner showed by a preponderance of evidence that she was engaged in protected activity. 2 U.S.C. §§ 1317, 1434. Petitioner established that she made non frivolous allegations that she was affected by the prohibited personnel actions and sustained irreparable, catastrophic tangible and intangible damages. ~~42 U.S.C. § 1981a(a)(1)~~. (E at 9). Due to the novel nature and seriousness of the offense, the courts below and the Board failed to demonstrate that a judicial employee is explicitly without legal protection from the merit systems appeal process. *Title VII Civil Rights Act of 1964 et seq.*; 42 U.S.C. § 2000e et seq; 2 U.S.C. §§ 1317, 1434. (A-C, E-G, and ROA on appeal). Petitioner met her burden of establishing Board jurisdiction under the *Civil Rights Act of*

1964 and is protected by an appeal right to the Board of her claim of intentional discrimination, which violated the "terms, conditions, and privileges" of her federal employment. 42 U.S.C. § 2000e-5(g)(1); 5 U.S.C. § 706(k). (E at 3, at 9-11).

2) Motion to Dismiss and Congressional Accountability Act of 1995. The agency moved to dismiss, and the Board agreed it did not have jurisdiction over the appeal. The courts below and the Board, however, have not addressed the Title VII intentional discrimination and disparate treatment and all other contentions at issue here. 42 U.S.C. § 2000e et seq. (A-1, A-7, A-11, A 14-19; E). The court below, which affirmed the Board's decision, was error because the Board's authority exists with respect to the agency's express provisions by Congress under the Congressional Accountability Act of 1995. 2 U.S.C. § 1302 (App. E at 1). Petitioner argues that the express determination of Congress under the Act affords legislative and judicial employees of their appeal rights to the Board. (A 15-19; E at 1). Petitioner also argues that the manner in which the employing office, the Board, and courts below handled and processed the case was prejudicial by dismissing

appeal for lack of jurisdiction, without reviewing the entire complaint and without addressing the merits of the complaint. Petitioner adversely infers the contents of the Appendix. Petitioner asserts that the employing office processed the complaint in bad faith, circumvented, and manipulated, which prejudiced the entire EDR process. 2 U.S.C. § 1434. (E at 2).

3) Competitive Service v. Excepted Service. The Board's case analysis, affirmed by the court below, was focused on the jurisdictional question whether the Petitioner meets the definition of "employee" asserting that *"the right to appeal an action to the Board is limited to persons who meet the definition of 'employee' set forth in 5 U.S.C. § 7511(a)(1),"* (F-8) and the definition of *"competitive service set forth in 5 U.S.C. § 2101(a)."* (E at 4). The Board, however, did not consider parallel federal statutes under federal civil service employment regulations, which the Petitioner cited and copies of exhibits provided. The Agency asserted that: (See Appendix E at 10).

The referenced quoted statement above was inaccurate and contradicted the Board's Opinion and Order

of July 12, 2004, because it was clear that the Board only considered the jurisdiction question referencing the Hartman case and rendered its final decision saying "This is the final decision of the MSPB in this Appeal. 5 CFR § 1201.113(c)." (A-7 at 9). 5 U.S.C. § 7701(c)(2). (App. E at 5, at 16). The appellate court made a clearly erroneous decision when it upheld the Board's decision. (App. A-1, A-7, ¶¶ 7, 8, & 11).

Furthermore, the Federal Circuit's analysis states that "[w]e find no error in the Board's interpretation of 'competitive service.' The term 'competitive service' is defined in 5 U.S.C. § 2102 as consisting of, inter alia, 'civil service positions in the executive branch which specifically included in the competitive service statute. Id. § 2102(a)(2)." (A-1 at 6).

The Board and the Federal Circuit Court of Appeals were adamant in their position about their interpretation of "competitive service." While Petitioner provided copies of appendices to the Board and to the Federal Circuit to support her contention regarding the "*competitive and excepted services*" issue, they asserted that "[t]he petitioner has not cited and we have not found any statute that places her



position in the competitive service[.]”(A-1 at 6), they rejected and/or ignored all parallel statutes and federal civil service regulations Petitioner had cited, with copies of appendices provided. The laws, statutes, federal civil service rules and regulations Petitioner had cited were clear. [Cite: 5CFR212.101] (1-1-05 Ed.) Part 212 – Competitive Service and Competitive Status, Sec. 212.101 Definitions, In this chapter states:

**(a) Competitive service has the meaning given that term by section 2102 of title 5, United States Code, and includes:**

- (1) All civilian positions in the executive branch of the Federal Government not specifically excepted from the civil service laws by or pursuant to statute, by the President, or by the Office of Personnel Management, and not in the Senior Executive Service; and**
- (2) All positions in the legislative and judicial branches of the Federal Government and in the government of the District of Columbia specifically made subject to the civil service laws by statute. . . .**

**5 U.S.C. § 2102(a)(2).** (See also, A-1 at 5, F). Furthermore, under 5 U.S.C. § 212.301, this chapter defines:

**competitive status [as] an individual's basic eligibility for noncompetitive assignment to a competitive position. *Competitive status is acquired automatically by completion of a probationary period under a career-conditional or career appointment, . . . .***

Petitioner, who was a career competitive-status transferee from the Veterans Administration, an agency under the executive branch, asserted that under 5 CFR Ch. 1, page 154 (1-1-05 Ed.) Subpart E—Career Employment by Transfer, § 315.501 of the CFR states:

**Subject to part 335 of this chapter, an agency may appoint by transfer to a competitive service position, without a break in service of a single workday, a current career or career-conditional employee of another agency.**

5 CFR § 315.501. [60 FR 53504, Oct. 16, 1995]. Likewise, being a tenured former federal employee, 5 CFR § 315.502 defines tenure on transfer as: (see Appendix E).

This regulation clearly identifies Petitioner's employment status. Similarly, 5 U.S.C. § 212.301, § 315.503 defines, "an employee acquires a competitive status automatically on completion of probation." (See A-8 at 8-9, Personnel Action for Petitioner when transferred from the VA). The Federal Circuit Court of Appeals affirming the Board's final decision, therefore, erred in its position that the Board lacked jurisdiction over Petitioner's appeal because the Petitioner was under "excepted service," not 'competitive



service of all positions in the executive branch" because she had established already her employment status. (App. E; ROA Vol. 2, Tab 12).

4) Definition of "Agency," "Executive and Judicial Branches of the Federal government," and "Employee." The agency, court below, and the Board's assertion that the *"Board lack jurisdiction over the appeal because the Petitioner is an employee of the judicial branch and does not have Board appeal rights under 5 U.S.C. § 7511(a)"* was clear error. (F-8). Furthermore, the Federal Circuit, in its final decision says, "[b]ecause the Board correctly concluded that Johnson did not come within any of the categories covered by the definition of "employee" under 5 U.S.C. § 7511, we affirm the Board's dismissal of her appeal for lack of jurisdiction." (A-1 at 2).

The Board and its counsel and court below clearly erred in interpreting the definition of *"employee,"* asserting that the Petitioner did not meet the definition of *"employee,"* and that the Board lacked jurisdiction. The Board and court below asserted that one of the ways to meet the statutory definition of *"employee,"* "*. . . is to be an individual in the competitive service who has completed a probationary period*

or trial period under an initial appointment or who has completed one year of current continuous service under other than a temporary appointment limited to one year or less. 5 U.S.C. § 7511(a)(1)(A)." (A-7 ¶ 6 at 6; A-1 at 4; A-12; E). As cited and established above, Petitioner's employment status was never an issue. Although Petitioner had already established and met the definition of an "employee" and "competitive service" status, here, Petitioner argues that under the judiciary provisions of *AOUSC Model EDR Plan* (F-2, where the Eleventh Circuit Court EDR Plan was modeled, F-6), which was adopted and approved by the Judicial Conference of the U.S. in March 1997, Petitioner also met the definition of "employee." Under Chapter 1, *Section 1, Preamble, and Section 2, Scope of Coverage*, of the Agency EDR Plan explain who are covered by the EDR Plan. *AOUSC Model EDR Plan*; 2 U.S.C. § 1302 (*Congressional Accountability Act of 1995*); 2 U.S.C. § 1434 (E at 1-2; F 2-6).

The definition of "employee" under the Agency and court's EDR Plan "... includes all individuals listed in Section 2 of this Chapter, as well as applicants for employment and former employees except as provided below."

... "The term "employing office" includes all offices of the United States courts of appeals... including the office of . . . staff attorneys. . . ." The term "court" refers to the appropriate court (appeals . . .) in which is located the employing office which would be responsible for redressing, correcting or abating the violation alleged in the complaint. . . ." (emphasis). Petitioner has satisfied the statutory requirement on the definition of "agency" and "employee" as well. 5 C.F.R. § 212.101. (E ; F 2-6).

5) Preponderance of Evidence Standard. Title 5 of CFR § 1201.56(2) states that the "Petitioner has the burden of proof, by a preponderance of evidence . . . ." Title 5 U.S.C. § 7701(c)(2). (E at 5). Petitioner asserts that due to the novel nature and complexity of this case, which involves major issues of circumstantial evidence under the prima facie doctrine, Petitioner submitted materials to meet the burden of proof by a preponderance of evidence. While Petitioner provided substantial material evidence to prove her case by a preponderance of evidence, the Board and courts below rejected and/or ignored those documents in rendering their final decision due to the Petitioner's employing office's

position in the judiciary. (See Fn 4 above). Petitioner's material evidence, which was part of the record of the 2002 EDR/EEO complaint, showed same documents, as supporting evidence for Petitioner's allegations of continuing retaliatory actions, in retaliation to Petitioner's filing of the complaint, and same evidence provided by the Respondents. 42 U.S.C. § 2000e-2 (A-17; C 3-4, 6-7, 9; ROA Vol. 5). The SAO did not provide written replies to all allegations. Evidence of bias and testimonies were inconsistent with, or contradicted by other evidence, provided by the Petitioner supporting her allegations. (ROA Vols. 5-6, Hearing Transcripts). The SAO's testimonies were inherently improbable. 42 U.S.C. § 2000e et seq.; 5 U.S.C. § 706(k). (App. E at 3, at 9-11).

6) The Hartman case. The Board and the court below erred in relying on the Hartman case in finding that the Petitioner [Johnson] was not an "employee" under Title 5 U.S.C. 7511(a)(1) because Petitioner did not meet the definition of an "employee." 5 U.S.C. § 7511(a)(1). The Hartman court found that it "need not determine whether petitioner is an 'employee' for any purpose under Title 5," and affirmed the case on other ground cited by the Board that the

Petitioner [Hartman] was not entitled to Individual Rights of Action under whistleblower protection laws. Hartman v. MSPB, 77 F.3d 1378, 1380 (5<sup>th</sup> Cir. 1996); 5 U.S.C. §§ 1221(a); 2302(a)(2)(A). (E at 4-5).

Here, the Petitioner had provided citations and relevant discussions of the law, and the Petitioner's case is distinguishable from the Hartman case. It is important to note that the court in the Hartman case did not find any statute that a judicial employee's position "was within the competitive service." Hartman at 1379 n.3. Likewise, Petitioner on Hartman failed to demonstrate by rule or statutes identifying the Petitioner [Hartman] as an Administrative Office of the U.S. Courts (AO) employee, and failed to provide evidence to support her allegation that she met the definition of "employee" under the MSPB jurisdiction.

The Board, its counsel, and the agency's reliance on Hartman case was clearly erroneous because the AO is not a separate agency within the judicial branch. The AO is the only administrative agency in the judicial branch that has the jurisdiction and administrative oversight responsibility to its

employing offices such as appellate courts, district and bankruptcy courts, and U.S. probation offices in administering personnel and administrative matters regarding judicial employees nationwide. (F 2-7).

Furthermore, Petitioner asserts that because of her own inside knowledge due to her duties and responsibilities as personnelist for the employing office for the last 3 ½ years before her involuntary/retaliatory termination, she argues those employing offices, including the 11<sup>th</sup> Circuit SAO, operate through delegation of authority, and function on behalf, and under the direction of, the Director of the AO, the judicial agency. 28 U.S.C. §§ 602, 604. (E at 5-6; F 2-7).

7) Intentional Discrimination and Disparate Treatment Standard. Title VII of the Civil Rights Act of 1964 prohibits employers from "discriminat[ing] against any individual with respect to her compensation, terms, conditions, or privileges of employment, because of her gender, race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a). (E at 2, 6-7). Recognizing that direct evidence of discrimination often may not be available to prove intentional discrimination, this Court set forth a burden-shifting



framework for analyzing Title VII disparate treatment cases in McDonnell Douglas Corp. v. Green, 411, U.S. 792, 802 (1973). Under the McDonnell Douglas framework, once a plaintiff has established a prima facie case of discrimination, the burden of going forward with evidence shifts to the employer to articulate a legitimate nondiscriminatory reason for the adverse employment actions. If the employer presents evidence of a nondiscriminatory reason for its action, the plaintiff may then show that the employer's proffered explanation is not the true reason for the employment decision or that a discriminatory reason more likely than not motivated the employer. Id. at 804; see Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981). The burden of persuasion remains with the plaintiff at all times. Burdine, 450 U.S. at 253.

The courts have used the McDonnell Douglas/Burdine pretext standard to resolve most Title VII cases for many years. It represents a "*sensible, orderly way to evaluate the evidence*" in a Title VII disparate treatment case, giving both plaintiff and defendant fair opportunities to litigate "*in light of common experience as it bears on the critical question of discrimination.*" Furnco Construction Corp. v. Waters, 438

U.S. 567, 577 (1978). It also represents this Court's definitive construction of "[t]he language of Title VII," which "makes plain the purpose of Congress to assure equality of employment opportunities and to eliminate those discriminatory practices and devices which have fostered racially stratified job environments to the disadvantage of minority citizens." 411 U.S. at 800. The McDonnell Douglas framework, moreover, has gained wide acceptance, in cases alleging discrimination on the basis of "race, color, religion, sex, or national origin." Wherever it applies, the McDonnell Douglas framework at all times places the burden on the plaintiff to demonstrate that the adverse employment action was taken "because of" discriminatory motive.

8) Continuing Violation Doctrine. In 1996, Petitioner pursued her full promotion, evidenced by emails between Petitioner and Respondent. (F-1). Respondent gave Petitioner a reasonably believable explanation that Petitioner "had already received full promotion." Over the years, Petitioner continued to pursue a promotion. Although Respondent made promises, the paperwork was never done then gave some kind of explanation. Over those years,



Petitioner did not know the actions and intent were discriminatory. Petitioner only recognized the nature of conduct as discriminatory in light of occurring events, especially when Respondent gave secretly blanket promotion to support staff in February. As Petitioner testified at the 2002 hearing, she had no knowledge that those promotions will happen because of her experience in the past in her pursuit for promotion. Although it was Petitioner's job to prepare personnel actions, those promotion actions for the support staff were prepared by Karen Sinyard, as evidenced on Petitioner's file on record. Petitioner recognized the discriminatory intent when an organizational chart was placed on employees' boxes on March 1, 2002. Petitioner verified the new titles of the support staffs who were promoted, which precipitated Petitioner's cause of action to file the discrimination complaint.

The Supreme Court ruled that considered claims of retaliation and hostile work environment brought under Title VII of the Civil Rights held that "a hostile work environment claim should be reviewed in its entirety, so long as one of the events comprising it fell within the statute of limitations" and emphasized, "a hostile work environment claim contains

a series of separate acts collectively constitute one unlawful employment practice.” National Railroad Passenger Corp. v. Morgan, 122 S.Ct. 2061, U.S. 4214 (2002). Further the Court states: (see E at 4).

B) 2003 Adverse Personnel Action—Involuntary Termination: 1) At the October 29, 2003, Adverse Personnel Action hearing, the employing office produced after-the-fact justification, with willful and malicious intent, bad faith, and were pretexts to cover up true reasons of employing office’s action. Dates on those after-the-fact justifications showed those documents were compiled while Petitioner was involved in protected activity. (Compare D to C; see also App. E at 10-11, for some relevant notes from Petitioner).

2) At the “Adverse Action Hearing” on October 29, 2003, Respondent’s counsel (for the employing office) asked the court to “*make findings that [the case] was not in retaliation for the EDR complaint proceeding [and bring it] to a close, [although the hearing was Adverse Personnel Action not EDR complaint hearing].*” (A-18; B 3-4; C). The magistrate responded the “Court’s intention to file anything in this case, so I am not going to issue an order sealing it because there is nothing that would be filed.” *Amendment*

XIV, § 1, U.S. Const. (E at 1; ROA Vol. 5 at 175-76; ROA Vol. 3).

C) 2002 EDR Complaint—Intentional Discrimination and Disparate Treatment under Title VII of the Civil Rights Act of 1964: 1) At the 2002 EDR hearing held on September 25-26, 2002, the employing office did not provide convincing explanation or evidence for its personnel actions but generally denied all complaint allegations. The hearing officer dismissed the appeal on procedural grounds. (See C generally). Petitioner provided preponderant evidence proofs that SAO's actions were unlawful, willful and malicious, in bad faith, which caused catastrophic, irreparable tangible and intangible damages to the Petitioner.

2. Prohibited personnel practices, under the *Civil Service Reform Act of 1978* provide that, "federal agency heads, managers, supervisors, and personnel officials are responsible for preventing prohibited personnel practices, including reprisals, and for complying with and enforcing civil service laws, rules, and regulations." *Civil Service Reform Act of 1978*. (E at 2). 2 U.S.C. § 1317; 5 U.S.C. §§ 2302(b)(1), 4303, 7512. (E at 5, F-8). Petitioner discussed point-by-point events of her discrimination and retaliatory

actions' allegations and factual disputes with supporting documents on her Brief, discussions of relevant facts and law, civil service rules and regulations, and federal employment statutes. 2 U.S.C. § 1317. (E at 1).

V. Reasons for Granting the Petition: A) The Staff Attorneys' Office (SAO), the courts below, and the agency had inherent conflict of interest because they were charged with self-regulation of discrimination complaints. The court below and the Board's order adversely affected Petitioner's rights. Adverse consequences in the courts' decision seriously affected "*terms, conditions, and privileges*" of Petitioner's federal employment. 5 U.S.C. § 706(k). (E at 3). By exercising its supervisory power, the U.S. Supreme Court is the only way this controversy could be resolved. *Article III, § 2, U.S. Const.*; 28 U.S.C. § 1651(a). (E at 1, at 6).

B) The Federal Circuit Court's three-judge merits-panel had the jurisdiction, responsibility, and charged to follow the laws of the circuit and constitutional laws. While the merits-panel was obliged to follow the law and decide the case on its merits, the merits-panel has failed to address the merits of the case, failed to follow its own decisions, and

decisions of the U.S. Supreme Court. The Administrative Office of the U.S. Courts (AO), the U.S. government agency and administrative arm of the U.S. courts in the judiciary nationwide, is responsible for ensuring compliance with anti discrimination laws and to set an example for those agency cultures where discrimination is tolerated. 2 U.S.C. § 1434; 42 U.S.C. § 2000e-2(b). (Id.). (E at 2, at 10).

C) Congress has expressly provided all judiciary employees under the Congressional Accountability Act 1995 for disclosing information without fear of reprisal. This Act provides a voice to judiciary employees protection of their employment rights. 2 U.S.C. §§ 1302, 1434 (App. E-2).

D) Petitioner is experienced in many facets of federal personnel administration for many years in both executive and judicial branches of the government, which was one of the issues concerning this case. Dismissing the case for lack of jurisdiction in the Federal Circuit appellate court level, while Petitioner alleged continuing intentional discrimination under the Civil Rights Act, was wrong, and unlawful. Courts are charged with righting the wrong, have moral, ethical, and legal responsibility to all employees, including judiciary employees. Petitioner proved the case by

a preponderance of evidence. The courts below and the Board cannot knowingly and intentionally deceive the Petitioner by asserting they do not have jurisdiction over the case without reviewing the merits of the case, allegations of civil rights and constitutional law violations, to avoid accountability and liability. *Amendment XIV, § 1, U.S. Constitution; 42 § U.S.C. 2000e-2, (2)(b); 5 U.S.C. § 706(k)*. (E at 1, 3, at 6-7).

**VI. Conclusion:** Petitioner argues she should prevail because the courts below incorrectly interpreted and applied the governing constitutional law, rules, regulations, and federal statutes. Petitioner respectfully requests that the Court GRANT judicial review of the entire matter on its merits and enter JUDGMENT as a matter of law for the aggrieved Petitioner.

**VII. Damages and Relief Sought:** Petitioner filed damage award decisions under 5 U.S.C. § 5596. The Federal Circuit Court granted Petitioner's Motion for Relief (with attachments) on November 8, 2004 (A-12), and under the custody of the clerk of the Federal Circuit Court. Petitioner also included Appendix G and its attachments, which set forth relief specifics, which is also part of the Appendix. Petitioner seeks full/make whole relief because of the extraordinary circumstances on this case. (See App. G).

Respectfully submitted,

30 Aug 2005  
Date

Evelyn L. Johnson

Evelyn L. Johnson

Pro se Petitioner

6241 S. Skyline Drive

Douglasville, GA 30135

Phone: 770-489-0343





**IN THE SUPREME COURT  
OF THE UNITED STATES**

---

In Re: Evelyn L. Johnson,

Petitioner.

---

**ON PETITION**

**FOR AN EXTRAORDINARY WRIT**

**OF MANDAMUS**

**AND/OR**

**PROHIBITION**

---

**APPENDIX**

---

30 Aug 2005  
Date

Evelyn L. Johnson  
Evelyn L. Johnson

Pro Se Petitioner

6241 S. Skyline Drive

Douglasville, GA 30135

(770) 489-0343

**[VOLUME 1 OF 2]**

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## APPENDIX — A

[1— 20]

	NO. OF PAGES		NO. OF PAGES
A — 1	12	A — 11	4
A — 2	2	A — 12	3
A — 3	3	A — 13	8
A — 4	5	A — 14	17
A — 5	2	A — 15	20
A — 6	17	A — 16	6
A — 7	11	A — 17	35
A — 8	13	A — 18	4
A — 9	3	A — 19	7
A — 10	2	A — 20	4

**NO. 04-3452**  
**INDEX OF APPENDICES**

<b>Description</b>	<b>Judge(s) Author of Paper</b>	<b>No of Pages</b>	<b>Date Filed in Court</b>	<b>Tab</b>
<b>2003 EDR COMPLAINT</b>				<b>A</b>
U.S. Court of Appeals for the Federal Circuit, Opinion	Newman, Laurie, Linn	12	04/06/05	1
U.S. Court of Appeals for the Federal Circuit, Order	Horbaly	2	02/09/05	2
U.S. Court of Appeals for the Federal Circuit, Order	Michel, Bryson, Prost	3	01/26/05	3
Petitioner's Obj. to Mot for Leave	Petitioner	5	01/06/05	4
Respondent's (MSPB) Motion For Leave To File Brief Out Of Time	Morrow, Board's Counsel	2	12/30/04	5

**NO. 04-3452**  
**INDEX OF APPENDICES**

<b>Description</b>	<b>Judge(s) Author of Paper</b>	<b>No of Pages</b>	<b>Date Filed in Court</b>	<b>Tab</b>
Respondent's (MSPB) Informal Brief	Morrow, Board's Counsel	17	12/20/04	6
Full Board's Final Decision	McPhie, Marshall	11	07/12/04	7
Regional MSPB's Initial Decision (attached to A-6)	Cummings	12	10/09/03	8
Request to the BD to Reopen Case	Petitioner	3	11/05/03	9
U.S. Court of Appeals for the Fed Cir, Order	Horbaly	2	11/18/04	10
Respondent's (AO) Motion To Recaption	Baunach, AO's Counsel	4	11/09/04	11
U.S. Court of Appeals for the Fed Cir, Order	Gajarsa	3	11/08/04	12

**NO. 04-3452**  
**INDEX OF APPENDICES**

<b>Description</b>	<b>Judge(s) Author of Paper</b>	<b>No of Pages</b>	<b>Date Filed in Court</b>	<b>Tab</b>
Pet's Entry of Appeal (include statement concerning discrim) w/ Fed Cir	Petitioner Petitioner	8	09/09/04 09/09/04	13
Order from the Chief, U.S. Court of Appeals 11 <sup>th</sup> Cir, letters, and papers related to the Order	Edmondson	17	01/16/04	14
Magistrate Judge Brill's final decision on "2003 EDR Complaint Hearing" held 12/08/03	Brill	12	12/17/03	15
Pet's EDR Frm filed 07/16/03, re: final dec. on 2003 EDR Complaint	Petitioner	6	07/16/03	16

**NO. 04-3452**  
**INDEX OF APPENDICES**

<b>Description</b>	<b>Judge(s) Author of Paper</b>	<b>No of Pages</b>	<b>Date Filed in Court</b>	<b>Tab</b>
Petitioner's MSPB form for the initial filing of the 2003 EDR complaint	Petitioner	35	09/06/03	17
Pet's Former Counsel Obj. To Hearing Held w/o Notice	Rivera, Petitioner's Former Counsel	4	12/12/03	18
Response to Petition for Review (AO)	Kattan, AO's Counsel	7	12/04/03	19
Pet's Counsel ltrs re: filing of Pet for Rev to the MSPB	Rivera	4	11/18/03 10/08/03	20
<b>ADVERSE PERSONNEL ACTION</b>				<b>B</b>
Response from the Chief, U.S. Court of Appeals 11 <sup>th</sup> Circuit to Petitioner's Former Counsel	Edmondson Rivera	5	11/21/03 11/19/03	1

**NO. 04-3452**  
**INDEX OF APPENDICES**

<b>Description</b>	<b>Judge(s) Author of Paper</b>	<b>No of Pages</b>	<b>Date Filed in Court</b>	<b>Tab</b>
Magistrate Judge Brill's Decision on "Adverse Personnel Action"	Brill	23	11/06/03	2
Ltr fr Pet's counsel to EDR Coord	Rivers	2	11/04/03	3
Ltr from the Chief of the 11 <sup>th</sup> Cir to Mag. Judge Brill	Edmondso n	1	08/28/03	
EDR Coord's Ltr to Pet	Phelps, EDR Coord	1	08/18/03	
EDR Coor's Ltr to Pet	Petitioner	2	07/22/03	
EDR Form Faxed by Pet for 2003 EDR Comp	Petitioner	8	07/16/03 (see A-16 above)	
Pet's counsel's ltr to J. Edmondson on Mots filed related to 2003 Adverse Pers Action	Rivera (see record on appeal Vol. 3 re: motions filed by Pet's counsel)	1	10/27/03	4

**NO. 04-3452**  
**INDEX OF APPENDICES**

<b>Description</b>	<b>Judge(s) Author of Paper</b>	<b>No of Pages</b>	<b>Date Filed in Court</b>	<b>Tab</b>
Judge Brill's letter to counsels of both parties	Brill	1	10/14/03	5
Resp's ltr to Brill	Doherty	3	10/10/03	
N. Zoller's ltr to Resp's counsel	Zoller	1	10/09/03	
Pet's counsel's ltr to Resp's counsel	Rivera	1	10/08/03	6



**NO. 04-3452**  
**INDEX OF APPENDICES**

<b>Description</b>	<b>Judge(s) Author of Paper</b>	<b>No of Pages</b>	<b>Date Filed in Court</b>	<b>Tab</b>
Pet's counsel's ltr to EDR Coord	Rivera	2	09/22/03	7
Judge's letter to both counsels regarding the hearing	Brill	2	09/15/03	
Pet's counsel ltr to EDR coord	Rivera	2	09/12/03	
EDR coord ltr to Pet's counsel	Phelps	1	09/09/03	
Pet's counsel ltr to Resp's counsel	Rivera	2	09/08/03	
Pet's counsel ltr to EDR coord	Rivera	2	09/05/03	
Waiver of Conf Form	Rivera	1	09/02/03	
EDR coord ltr to Pet's counsel	Phelps	1	08/29/03	
J. Edmondson's ltr to Brill	Edmondson	2	08/28/03	
Pet's counsel ltr to EDR coordinator	Rivera	2	08/28/03	

**NO. 04-3452**  
**INDEX OF APPENDICES**

<b>Description</b>	<b>Judge(s) Author of Paper</b>	<b>No of Pages</b>	<b>Date Filed in Court</b>	<b>Tab</b>
Ltr fr Pet's counsel fr Wash, DC	M. Johnson	1	07/29/03	8
Letter from J. Brill to Pet's counsel in Wash, DC	Brill	2	07/23/03	9
SAO's ltrs to Pet related to 06/20/03 ltr Inv term ltr to Pet	Godfrey M. Johnson Irvine Godfrey	2 2 1 4	07/10/03 07/02/03 07/01/03 06/20/03	10
<b>2002 EDR Complaint</b>				<b>C</b>
Orders from CJ Edmondson affirming MJ King's dec on 2002 EDR complaint (for the jud council)	Edmondso n	6	04/24/03	1
Ltr to N. Godfrey fr Asst. CE	Alexander	2	03/31/03	2
Ltr, Mot, & EDR frm dtd 03/31/03 to V. Alexander re: cont'ng retal actions	Petitioner	25	03/31/03	3

**APPENDIX — A-1**

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record.

**United States Court of Appeals  
for the Federal Circuit**

04-3452

**EVELYN L. JOHNSON,**

**Petitioner,**

**v.**

**MERIT SYSTEMS PROTECTION BOARD,**

**Respondent.**

---

**DECIDED: April 6, 2005**

---

**Before NEWMAN, LOURIE, AND LINN, Circuit Judges.**

**PER CURIAM.**

Evelyn Johnson ("Johnson") seeks review of the final decision of the Merit Systems Protection Board ("Board") dismissing for lack of jurisdiction her appeal of her removal from the position of Human Resources Coordinator in the

#### APPENDIX — A-1

Staff Attorneys' Office at the United States Court of Appeals for the Eleventh Circuit. See Johnson v. Admin Office of the U.S. Courts, No. AT-0752-03-0934-1-1 (M.S.P.B. July 12, 2004) ("Final Decision"). Because the Board correctly concluded that Johnson did not come within any of the categories covered by the definition of "employee" under 5 U.S.C. § 7511, we affirm the Board's dismissal of her appeal for lack of jurisdiction.

#### BACKGROUND

Johnson began her employment at the United States Court of Appeals for the Eleventh Circuit as a Court Secretary. She was subsequently promoted to the position of Human Resources Coordinator in the Staff Attorneys' Office. On June 20, 2003, Johnson was notified of the termination of her position effective June 27, 2003. She filed an appeal of her termination with the Board. Shortly thereafter, she informed the Board that she wished to withdraw her appeal. Her appeal was dismissed on October 9, 2003. See Johnson v. Admin Office of the U.S. Courts, No. AT-0752-03-0934-1-1 (M.S.P.B. October 9, 2003) ("Initial").

#### APPENDIX — 3-A

leave to file a second supplemental brief. The Board moves for leave to file its brief out of time. Johnson opposes.

In seeking review of our prior order, Johnson appears to be under the mistaken impression that our order naming the Board as respondent was equivalent to "[r]emanding or transferring this case to the Board for Review on its merits." Review of the Board's final decision will proceed in this court, notwithstanding the fact that an attorney for Board, as opposed to the agency, will be defending the Board's decision. The court's reforming the caption will not impact Johnson's rights and, as explained in the earlier order, is mandated by law in these circumstances. See 5 U.S.C. § 7703(a)(2)l; Spruill v. Merit Sys. Protection Bd., 978 F.2d 679, 686 (Fed. Cir. 1992) (holding that the Board is the proper respondent where the Board's ruling is limited to jurisdictional determination). Thus, reconsideration of the order reforming the caption is not warranted.

Because Johnson has already filed a lengthy supplemental brief, we conclude that filing of a second supplemental brief is not warranted. However, Johnson may

## APPENDIX — A-1

On November 6, 2003, Johnson filed a petition for review of the Initial Decision stating that she wished to reopen her case. The Board denied Johnson's petition for review, vacated the Initial Decision, and dismissed her appeal for lack of jurisdiction in its Final Decision. The Board noted that its jurisdiction was limited to "employees" as defined in 5 U.S.C. § 7511(a)(1) and that Johnson, as an employee of the Judicial Branch of the government, did not meet the definition of "employee" under that section.

We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(9).

### DISCUSSION

#### A. Standard of Review

Pursuant to 5 U.S.C. § 7703(c), this court must affirm the Board's decision unless it is: (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (2) obtained without procedures required by law, rule or regulation having been followed; or (3) unsupported by substantial evidence. Chase-Baker v. Dep't of Justice, 198 F.3d 843, 845 (Fed. Cir. 1999). Whether the Board has jurisdiction over an appeal is a question of law, which we

## APPENDIX — A-1

review de novo. Hayes v. U.S. Postal Serv., 390 F.3d 1373, 1376 (Fed. Cir. 2004). The petitioner bears the burden of establishing reversible error in reviewing a decision of an administrative agency such as the Board. Harris v. Dep't of Veterans Affairs, 142 F.3d 1463, 1467 (Fed. Cir. 1998).

### B. Analysis

The burden of establishing jurisdiction is placed by regulation on the appellant. 5 C.F.R. § 1201.56(a)(2)(I) (2003); McCormick v. Dep't of the Air Force, 307 F.3d 1339, 1340 (Fed. Cir. 2002). The Board's jurisdiction is strictly limited to that provided by statute rule, or regulation. 5 U.S.C. § 7701(a) (2000); Forest v. Merit Sys. Prot. Bd. 47 F.3d 409, 410 (Fed. Cir. 1995). The Board has jurisdiction under 5 U.S.C. § 7513 to hear appeals from removals. The Board's jurisdiction, however, is limited, and "with respect to adverse actions under section 7513, that jurisdiction only encompasses appeals by 'employees' as defined in 5 U.S.C. § 7511(a)(1)." Hartman v. Merit Sys. Prot. Bd., 77 F.3d 1378 1380 (Fed. Cir. 1996).



## APPENDIX — A-1

The Board correctly identified three ways to meet the statutory definition of "employee" as set forth by 5 U.S.C. § 7511(a)(1). Section 7511(a)(1) defines an employee, in relevant part, as: (1) an individual in the competitive service who has fulfilled the requisite length of service; (2) a preference eligible individual in the excepted service who has completed one year of current continuous service in the same or similar position in an Executive agency; the United States Postal Service, or the Postal Rate Commission; and (3) a nonpreference individual in the excepted service who has completed two years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two years or less. 5 U.S.C. § 7511(a)(1)(A)-(C) (2000).

Johnson contends that the Board erred in defining and interpreting "competitive service." We find no error in the Board's interpretation of "competitive service." The term "competitive service" is defined in 5 U.S.C. § 2102 as consisting of, inter alia, "civil service positions in the executive branch which specifically included in the

## APPENDIX — A-1

competitive service by statute." Id. § 2102 (a)(2). The petitioner has not cited and we have not found any statute that places her position in the competitive service.

Johnson also contends that the Board erred in interpreting "excepted service." Subject to a few exceptions not relevant here, the "excepted service" consists of all civil service positions in an Executive agency. An Executive agency is defined as an "Executive department, a Government corporation, and an independent establishment." Id. § 105. The Board correctly concluded, and Johnson does not dispute, that she was an employee of the Judicial Branch, and not an employee of an Executive agency of the federal government. Accordingly, we agree with the Board that Johnson does not meet the definition of "employee" on this basis.

Johnson finally contends that, because she alleged that her removal was based on discrimination, her case is a "mixed case" within the Board's jurisdiction under 5 U.S.C. § 7702. For the purpose of determining the Board's jurisdiction, the discrimination claims must be made with



## APPENDIX — A-1

respect to a personnel action that is otherwise appealable to the Board. Id. § 7702. Hartman, 77 F.3d at 1381. Since the Board lacks jurisdiction over personnel actions affecting employees of the Judicial Branch, the Board lacks jurisdiction to hear Johnson's discrimination claims as well.

Accordingly, the Board did not err as a matter of law in concluding that it lacked jurisdiction to consider Johnson's petition.

**APPENDIX — A-1**

**UNITED STATES COURT OF APPEALS**

**FOR THE FEDERAL CIRCUIT**

**NOTICE OF ENTRY OF JUDGMENT**

**ACCOMPANIED BY OPINION**

**OPINION FILED AND JUDGMENT**

**ENTERED: 04/06/05**

The attached opinion announcing the judgment of the court in your case was filed and judgment was entered on the date indicated above. The mandate will be issued in due course.

Information is also provided about petitions for rehearing and petitions for rehearing en banc. The questions and answers are those frequently asked and answered by the Clerk's Office.

Costs are taxed against the Petitioner(s) under Rule 39. The party entitled to costs is provided a bill of costs form and an instruction sheet with this notice.

The parties are encouraged to stipulate to the costs. A bill of costs will be presumed correct in the absence of a timely filed objection.

## APPENDIX — A-1

Costs are payable to the party awarded costs. If costs are awarded to the government, they should be paid to the Treasurer of the United States. Where costs are awarded against the government, payment should be made to the person(s) designated under the governing statutes, the court's orders, and the parties' written settlement agreements. In cases between private parties, payment should be made to counsel for the party awarded costs or, if the party is not represented by counsel, to the party pro se. Payment costs should be sent to the court. Costs should be paid promptly.

If the court also imposed monetary sanctions, they are payable to the opposing party unless the court's opinion provides otherwise. Sanctions should be paid in the same way as costs.

Regarding exhibits and visual aids: Your attention is directed to FRAP 34(g) which states that the clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to

**APPENDIX — A-1**

remove them. (The clerk deems a reasonable time to be 15 days from the date the final mandate is issued).

/s/  
**JAN HORBALY**  
Clerk

cc: **EVELYN L. JOHNSON**  
**CALVIN MORROW**

**JOHNSON V MSPB, 04-3452**  
**MSPB - AT0752030934-I-1**

**APPENDIX — A-1**

**UNITED STATES COURT OF APPEALS**

**FOR THE FEDERAL CIRCUIT**

**NOTICE OF SUBMISSION**

**WITHOUT ORAL ARGUMENT**

**04-3452**

**JOHNSON V MSPB**

A review of this case indicates that oral argument is not required and that the appeal may be decided on the briefs without prejudice to full consideration of the issues. This case will be submitted to a panel of judges of the court on April 5, 2005. Because the court has not allotted time for oral argument, nothing concerning this case will take place in open court even though the appeal appears on the court's calendar for that day.

Someone appearing pro se, or counsel for a party, may file a memorandum presenting reasons why oral argument would assist the court or answers to points in an opposing brief that might otherwise have been presented at oral argument, or both. The memorandum, not to exceed 5 pages, may be typewritten on 8 1/2 by 11 inch paper. An original and

## **APPENDIX — A-1**

six copies of the memorandum should be filed on or before March 18, 2005. If there are any questions regarding this notice, please contact James Benjamin (202) 312-5526, for MSPB, Court of Federal Claims, or Department of Veterans Affairs appeals, or Linda Purdie (202) 312-5527, for other appeals.

If a request for oral argument is made and granted, the appeal would be scheduled for hearing on the same date that this case is to be submitted to the court, and you will be notified by telephone or mail.

After the appeal has been decided by the panel of judges, you will be sent a copy of the decision by mail. Although appeals are usually decided soon after the submission date, in some instances a longer period is required. In any event, you will be notified promptly.

**FOR THE COURT  
JAN HORBALY  
CLERK**

**February 22, 2005**

**cc: EVELYN L. JOHNSON  
CALVIN MORROW**

**APPENDIX — 2-A**

**NOTE:** Pursuant to Fed. Cir. R. 47.6,  
this order is not citable as precedent.  
It is a public order.

**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

**04-3452**

**EVELYN L. JOHNSON,**

**Petitioner,**

**v.**

**MERITS SYSTEMS PROTECTION BOARD**

**Respondent.**

**ON MOTION**

**ORDER**

Evelyn L. Johnson moves without opposition for a 30-day extension of time, until March 11, 2005, to file her reply brief.

Upon consideration thereof,

**IT IS ORDERED THAT:**

**The motion is granted.**

**FOR THE COURT**

**APPENDIX — 2-A**

FEB - 9 2005

Jan Horbaly/JB  
Clerk

cc: Evelyn L. Johnson  
Calvin Morrow, Esq.

**FILED**  
**U.S. COURT OF APPEALS FOR**  
**THE FEDERAL CIRCUIT**

**FEB 09 2005**

**JAN HORBALY**  
**CLERK**



**APPENDIX — 3-A**

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record.

**United States Court of Appeals  
for the Federal Circuit**

04-3452

EVELYN L. JOHNSON,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

ON MOTION

Before Michel, Chief Judge, BRYSON and PROST,

Circuit Judges.

BRYSON, Circuit Judge.

**ORDER**

Evelyn L. Johnson seeks three-judge review of the court's order reforming the caption to designate the Merit Systems Protection Board as the respondent in place of the Administrative Office of the U.S. Courts. Johnson moves for

APPENDIX — 3-A

file a reply brief.

Accordingly,

IT IS ORDERED THAT:

(1) Johnson's motion for three-judge review is granted.

(2) Johnson's motion for reconsideration is denied.

(3) Johnson's motion for leave to file a second supplemental brief is denied.

(4) The Board's motion for leave to file its brief out of time is granted.

FOR THE COURT

Jan 26, 2005  
Date

/s/ William C. Bryson  
William C. Bryson  
Circuit Judge

cc: Evelyn L. Johnson  
Calvin Morrow, Esq.

FILED  
U.S. COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT  
JAN HORBALY  
CLERK  
JAN 26, 2005

**APPENDIX — 4-A**

**04-3452**

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**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

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**EVELYN L. JOHNSON,**

**Petitioner,**

**v.**

**MERIT SYSTEMS PROTECTION BOARD,**

**Respondent.**

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**Petition for Review  
from the Merit Sys. Protection Bd.  
in Docket No. AT-0752-03-0934-I-1**

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**PETITIONER'S OBJECTION  
TO RESPONDENT'S MOTION FOR LEAVE  
TO FILE BRIEF OUT OF TIME**

**The Petitioner in the above-referenced matter moves  
the United States Court of Appeals for the Federal Circuit to  
DENY Respondent's (through its counsel) Motion For Leave  
To File Brief Out Of Time. In support of this motion,**

## APPENDIX — 4-A

Petitioner asserts the following:

1. The Court's Order dated November 8, 2004, specifically states that "(5) The Board's Brief, either formal or informal is due within 40 days of the date of the filing of this order." The Board's Brief was due December 18, 2004. The Board filed its informal brief on December 20, 2004, and was rejected by the Court for untimely filing of the Brief. Respondent's Counsel ("Counsel") asserted that "despite reasonable efforts to ensure timely filing," Counsel blamed the courier in the untimely filing of the Brief. Counsel failed to show good cause in the untimely filing of the Board's Brief.

2. Petitioner asserts that Counsel for the Board failed to establish "reasonable efforts to ensure timely filing of the Brief" because Counsel conceded that "[t]he Board's final Brief was put in final form and signed on December 20, 2004, . . . [and that] the package was placed in the Court's night deposit box on December 20, 2004" two days after the filing deadline of December 18, 2004. Petitioner also asserts that Counsel had ample time, 40 days, to file the Brief, but the Brief was not final and not signed until December 20,

## APPENDIX — 4-A

2004.” Petitioner also asserts that while she deals with cancer, its treatments, its side effects, and pro se filings, Petitioner was able to file timely her Brief and supporting documents to the Court.

3. Counsel erred in recommending to the Court to dismiss the complaint for lack of jurisdiction. Respondent’s Motion to Recaption, dated November 9, 2004, states that “[t]he Respondent [Administrative Office of the U.S. Courts] and the Board agree that the MSPB’s dismissal of Ms. Johnson’s appeal for lack of jurisdiction is not a final order or decision on the merits of the underlying Personnel action.” See U.S.C. § 7703(a)(2). The Court’s Order dated November 8, 2004, states that “[b]ecause the Board’s ruling was limited to a jurisdictional determination and did not address the underlying merits pertaining to Johnson’s termination, the Board is the proper respondent in this petition for review.” Furthermore, the Order states that “[t]he employing agency [Administrative Office of the U.S. Courts] is designated as the respondent when the Board reaches the merits of the

#### APPENDIX — 4-A

underlying case. See Spruill v. MSPB, 978 F.2d 679 686 (Fed. Cir. 1992).

4. As specifically stated on the Court's Order of November 8, 2004, the Board did not address Petitioner's discrimination allegations, true issues of sets of facts and law, in reaching its decision. Counsel, nonetheless, rehashed the Board's Order of July 12, 2004, and recommended dismissing the appeal for lack of jurisdiction to the Court.

5. As Petitioner discussed point by point her discrimination allegations and factual disputes with supporting documents on her Brief, supplements to her Brief, reply to Respondent's motions, and discussions of relevant facts and law, civil service rules and regulations, and federal employment statutes, Counsel failed to address the merits of those issues on the Board's informal Brief, as specified in the Court's Order.

For the reasons set forth above and in the interest of substantial justice, Petitioner respectfully requests the Court to DENY the Board's Motion For Leave To File Brief Out Of Time, vacate and set aside the Board's recommendation and

**APPENDIX — 4-A**

decision, find full merits of Petitioner's entire claim, and  
issue judgment as a matter of law for the Petitioner.

Respectfully submitted,

January 6, 2005  
Date

/s/ Evelyn L. Johnson  
Evelyn L. Johnson  
Pro se Petitioner  
6241 S. Skyline Drive  
Douglasville, GA 30135  
(770) 489-0343

cc: Calvin M. Morrow  
Evelyn L. Johnson

**APPENDIX — 5-A**  
**IN THE UNITED STATES**  
**COURT OF APPEALS**  
**FOR THE FEDERAL CIRCUIT**

NO. 04-3452

EVELYN L. JOHNSON,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

**MOTION FOR LEAVE TO**  
**FILE BRIEF OUT OF TIME**

The respondent Merit Systems Protection Board (Board), by its counsel, respectfully moves the Court for leave to file its brief out of time. The grounds for this motion are set out below.

1. Under the Court's order dated November 8, 2004, the brief for respondent was due December 20, 2004.

2. According to the Court's order of December 23, 2004, the Court received the Board's informal brief, but determined that it was filed untimely, i.e., between December 21-23, 2004.



## APPENDIX — 5-A

3. The Board's brief was put in final form and signed on December 20, 2004.

4. The Board's courier service was notified on December 20, 2004, that there was a package to be picked up for filing with the Court on that day.

5. The courier who picked up the package containing the Board's brief has stated to Board employees that he placed the package in the Court's night deposit box on December 20, 2004.

6. If the Board's brief was untimely filed, it was untimely despite counsel's reasonable efforts to ensure timely filing.

Wherefore, the Board respectfully requests the Court to grant it leave to file its brief out of time.

Respectfully submitted,

December 30, 2004

MARTHA B. SCHNEIDER

General Counsel

/s/CALVIN M. MORROW

Attorney

Office of the General Counsel  
Merit Systems Protection Board  
1615 M Street, NW  
Washington, D.C. 20419-0002  
(202) 653-6772 Ext 1280

**APPENDIX — 6-A**  
**IN THE UNITED STATES**  
**COURT OF APPEALS**  
**FOR THE FEDERAL CIRCUIT**

**NO. 04-3452**

**EVELYN L. JOHNSON,**

**Petitioner,**

**v.**

**MERIT SYSTEMS PROTECTION BOARD,**

**Respondent.**

**RESPONDENT'S INFORMAL BRIEF**

**I. NATURE OF THE CASE.**

The petitioner, Evelyn L. Johnson, seeks review of a final decision of the Merit Systems Protection Board (Board or MSPB) that dismissed for lack of jurisdiction her appeal from the termination of her employment from a position in judicial branch of the federal government. Evelyn L. Johnson v. Admin Office of the U.S. Courts, MSPB Docket No. AT-0752-03-0934-I-1 (Opinion and Order, July 12, 2004). Respondent's Appendix (RA) 1-6.

**II. STATEMENT OF FACTS AND THE COURSE OF**

## **APPENDIX — 6-A**

### **PROCEEDINGS BELOW:**

The petitioner, Evelyn Johnson, received an excepted appointment to the position of Court Secretary in the Staff Attorneys' Office of the United States Court of Appeals for the Eleventh Circuit effective January 17, 1989. RA 14. Ms. Johnson was subsequently promoted to the position of Human resources Coordinator in the Staff Attorneys' Office effective September 10, 2001. RA 15. On June 20, 2003, the Senior Staff Attorney notified petitioner of her termination from her position effective June 27, 2003, because of unacceptable conduct and unsatisfactory work. RA 16-17.

Ms. Johnson filed an appeal of her termination with the Board on September 9, 2003. Shortly afterward, on October 8, 2003, she informed the Board that she wished to withdraw her appeal. The administrative judge accordingly dismissed petitioner's appeal as withdrawn on October 9, 2003. RA 7-8.

On November 6, 2003, Ms. Johnson filed a petition for review of the initial decision stating that she wished to reopen her case and that the agency misled her concerning

## APPENDIX — 6-A

her rights. Petitioner contended that the Board had jurisdiction over her appeal from her removal for unacceptable performance because she was a nonpreference eligible employee in the excepted service with more than two years of current continuous service. She also argued that the Board's jurisdiction included her claims of discrimination based on race, sex, color, age and national origin. RA 2, 18-19. The agency opposed Ms. Johnson's petition, arguing that the Board lacked jurisdiction because petitioner was an employee of the judicial branch and was therefore not an "employee" entitled to appeal to the Board under 5 U.S.C. § 7511(a). RA 2.

The Board denied Ms. Johnson's petition for review, vacated the initial decision, and dismissed her appeal for lack of jurisdiction. The Board noted that its jurisdiction over removal appeals under 5 U.S.C. § 7513(d) is limited to individuals who meet the definition of "employee" in 5 U.S.C. § 7511(a)(1). RA 3. The Board determined that Ms. Johnson did not meet any of the definitions of an "employee" under that section because the evidence

## APPENDIX -- 6-A

showed that she was employed in the judicial branch of the government, a fact that she did not dispute. [Pet.'s Note: analysis was error because under 5 U.S.C. § 7511(a)(1)(C), Petitioner is "an individual in the excepted service (other than preference eligible) (i) who is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service." See 5 U.S.C. § 7511(a)(1)(C)(i). (Appendix F-8). To qualify under section 7511, the Board noted, an individual must be employed in a position in an agency in the executive branch or in a position in a non-executive agency that is specifically included by statute in the competitive service. Although petitioner argued (in later submissions) that her position was in the competitive service, the Board found that none of the statutes that applied to her position specifically placed it in competitive service. [Pet.'s Note: analysis was error. See 5 C.F.R. § 1.2, Appendix F, Tab 8.). The Board therefore concluded that it lacked jurisdiction over petitioner's appeal. RA 4-5.

## APPENDIX — 6-A

1. Has the petitioner ever had another case in this Court, a United States District Court, or in the Equal Employment Opportunity Commission?

Petitioner indicated in her Fed.Cir.R. 15(c) Statement Concerning Discrimination that she filed a discrimination case concerning the same matter in both the U.S. District Court and the Equal Employment Opportunity Commission (EEOC). Under Williams v. Dep't of the Army, 715 F.2d 1485, 1491 (Fed. Cir. 1998) (en banc), Ms. Johnson is not permitted to bifurcate her appeal of her removal between review in this Court and a civil action in district court. However, petitioner's appended explanation appears to indicate that her reference to a district court case is not to a civil action under 5 U.S.C. § 7703(b)(2), but to the role of magistrate judges of the U.S. District Court for the Northern District of Georgia in processing her internal employment dispute resolution complaint filed with her employer, the Eleventh Circuit Court of Appeals. See also Petitioner's Brief (PB) at 2. In addition, petitioner's explanation states that her EEOC filing concerning her removal was dismissed

## APPENDIX — 6-A

for lack of jurisdiction.

Counsel for the respondent is not aware of any other cases filed by petitioner in this Court, a U.S. district court, or the EEOC.

2. Did the MSPB incorrectly decide or fail to take into account any facts?

No. The Board considered the relevant facts, which are not in dispute. [Pet.'s Note: Incorrect, MSPB considered jurisdiction only.]. Ms. Johnson sought to appeal her removal from her employment as a Human Resources Coordinator in the Staff Attorneys' Office of the U.S. Court of Appeals for the Eleventh Circuit, a position in the judicial branch of the federal government. As discussed below, no statute or regulation gives the Board jurisdiction to hear this appeal. [Pet.'s Note: So, judicial employees do not have equal rights protection? The case was brought under Title VII of the CRA of 1964.].

3. Did the MSPB apply the wrong law?

No. The Court's review is limited to determining whether the Board's decision is arbitrary, capricious, an



## APPENDIX — 6-A

abuse of discretion or otherwise not in accordance with the law; obtained without unsupported by substantial evidence. 5 U.S.C. § 7703(c). [Pet.'s Note: Yes, see 5 U.S.C. § 7701 (c)(2), Appendix E.]. The issue of whether the Board has jurisdiction over petitioner's appeal is a question of law which the Court reviews de novo. King v. Merit Systems Prot. Bd., 105 F.3d 635, 638 (Fed. Cir. 1997). Petitioner has the burden of establishing the Board's jurisdiction. [Pet.'s Note: Petitioner met the burden by a preponderance of evidence, but the Board did not consider the evidence filed with the Board.]. Ellison v. Merit Systems Prot. Bd., 7 F.3d 1031, 1036 (Fed. Cir. 1993).

The Board's appellate jurisdiction under 5 U.S.C. § 7701(a) is strictly limited to that provided by statute or regulation. [Pet.'s Note: See Appendix F, Tabs 2-6, & 8; 2 U.S.C. § 1434.]. Forest v. Merit Systems Prot. Bd., 47 F.3d 409, 410 (Fed. Cir. 1995). The Board has authority to hear appeals from removals for misconduct or poor work performance under 5 U.S.C. §§ 7513(d) and 4303(e). However, such appeals are limited to individuals who are



## APPENDIX — 6-A

“employees” as defined in 5 U.S.C. § 7511(a)(1). Hartman v. Merit Systems Prot. Bd., 77 F.3d 1378, 1380 (Fed. Cir. 1996).  
See also U.S.C. § 4303(e), (f).

For purposes of the adverse action subchapter, section 7511(a) defined “employee” in relevant part as: 1) an individual in the competitive service [Pet.’s Note: See 5 C.F.R. § 1.2, Extent of Competitive Service, Appendix F, Tab 8.]; 2) a preference eligible individual in the excepted service with 1 year of current continuous service in an executive agency. It is evident that, as the Board found, the petitioner does not meet any of these definitions of an “employee” who is entitled to appeal to the Board.

In her petition for review, Ms. Johnson contended that she was a nonpreference eligible with sufficient service to be entitled to appeal to the Board. However, it is clear that her service was not in an executive agency, as required by the statute. An “executive agency” is defined in 5 U.S.C. § 105 to include an executive department, a government

## APPENDIX -- 6-A

corporation, and an independent establishment. An "independent establishment" is defined in 5 U.S.C. § 104 to include only an establishment in the executive branch and the General Accounting Office. [Pet.'s Note: including judicial (2 U.S.C. § 1434) and legislative (CAA of 1995) branches of the government.]. These definitions clearly do not include the United States courts, which are in the judicial branch. See Hartman v. Merit Systems Prot. Bd., 77 F.3d at 1381.

Ms. Johnson was appointed to her position under 28 U.S.C. § 715(b). This provision authorizes the senior staff attorney, appointed under 28 U.S.C. § 715(a) by the chief judge of each court of appeals, to appoint, with the approval of the chief judge, "necessary staff attorneys and secretarial and clerical employees. . . ." <sup>1</sup> The same provision

---

<sup>1</sup> The number of staff hired must be approved by the Administrative Office of the U.S. Courts (AO), a separate agency within the judicial branch [Pet.'s Note: Although Respondents, the Board, and the Agency were adamant with their position that the AO is a separate agency within the judicial branch, Petitioner categorically asserts and without a doubt, and due to internal knowledge due to her duties in the position as a personnelist

## APPENDIX — 6-A

authorizes the senior staff attorney to remove such employees with the approval of the chief judge. Consistent with this provision, the notifications of personnel action for petitioner's two staff positions at the court of appeals indicate that her appointments were in the judicial branch. RA 14-15.

The Board also correctly rejected petitioner's argument that she was entitled to appeal as an individual in the competitive service. The competitive service is defined in 5 U.S.C. § 2102(a) as including all civil service positions in the executive branch with specified exceptions and civil service positions [Pet.'s Note: not only executive but also judicial and legislative branches of the government] not in the executive branch "which are specifically included

---

before her retaliatory firing, the AO is the only administrative agency in the judicial branch.] established by 28 U.S.C. § 601 to supervise administrative matters relating to the courts' clerical personnel. The AO was the respondent below, but the Petitioner was an employee of the court of appeals. See Hartman v. Merit Systems Protection Board, 77 F.3d at 1380. [Petitioner's case before the court is distinguishable from the Hartman case.].

## APPENDIX — 6-A

in the competitive service by statute.”<sup>2</sup>

The statutes that govern employment in the courts of appeals, 28 U.S.C. § 711-717, do not include any of the positions that they cover in the competitive. Petitioner has cited no statute that places her position in the competitive service. [Pet.'s Note: See Appendix F about parallel statutes, which Petitioner cited and attached copies of those rules, regulations, and statutes, but the Board never considered them. See also, 5 C.F.R. § 1.2, “the competitive service shall include (a) . . . . (b) all positions in the legislative and judicial branches of the federal government . . . which are specifically made subject to the civil service laws by statute.” (Appendix E).] Thus, it is also clear that she does not qualify as an employee entitled to appeal to the Board on this basis.

---

<sup>2</sup> Contrary to Petitioner's assertion, Motion to Supplement Initial Brief at 4, the definition of the competitive service in 5 C.F.R. § 1.2 is the same. [Pet.'s Note: Don't know what he meant by this, but Petitioner's evidence on Appendix F, Tab 8, administrative law, rules, regulations, and statutes, that the laws she cited are very clear, about Petitioner's assertion that her employment was under the federal civil service employment regulation.]

## APPENDIX — 6-A

Before the Court, Ms. Johnson contends that, because she alleged that her removal was based on discrimination, her case was a "mixed case" under 5 U.S.C. § 7702. PB 4-5. Petitioner is mistaken in this contention. Although she claimed discrimination in violation of various statutes listed in section 7702(a)(1)(B), such allegations must be made with respect to a personnel action that is otherwise appealable to the Board. [Pet.'s Note: Petitioner alleged prohibited personnel practice, intentional discrimination and disparate treatment due to non promotion for several years, and retaliatory removal.]. See 5 U.S.C. § 7702(a)(1)(A). Since the Board lacks jurisdiction over personnel actions affecting employees of the judicial branch, petitioner's removal provides no basis for the Board's jurisdiction over the discrimination claims. See Hartman v. Merit Systems Prot. Bd., 77 F.3d at 1381, citing Brodts v. Merit Systems Prot. Bd., 11 F.3d 1060, 1061 (Fed. Cir. 1993). Finally, the definition of the term employee in

## APPENDIX — 6-A

the AO's Model Employment Dispute Resolution Plan on which the petitioner relies, Motion to Supplement Initial Brief at 3, is clearly irrelevant to the issue of petitioner's status under 5 U.S.C. § 7511(a).

[Pet.'s Note: And why not? 11<sup>th</sup> Circuit Model EDR Plan was modeled under the AO's EDR Plan, which "shall be known as the Federal Judiciary Model Employment Dispute Resolution Plan ("Model EDR Plan"). It was adopted by the Judicial Conference of the United States in order to provide rights and protections to employees of the United States courts which are comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995." (Appendix F-2, 6).].

4. Did the MSPB fail to consider important grounds for relief?

No.

5. Are there other reasons why the MSPB's decision was



## APPENDIX — 6-A

wrong?

No. Petitioner is mistaken in asserting, Motion for Reconsideration and Reply to Motion at 3, that the Board is required by Fed.Cir.R. 15(c)(2) to address her discrimination claims. This requirement does not apply because, in her Fed.Cir.R. 15(c) Statement Concerning Discrimination, Ms. Johnson stated that she was seeking only review of the Board's dismissal of her case for lack of jurisdiction. [Pet.'s Note: Incorrect. See the continuation page, Appendix 13-A.]. Petitioner's extensive discussion of the merits of her discrimination claims in her brief does not change the effect of her statement concerning the matter under review. [Pet.'s Note: See U.S. Court of Appeals for Federal Circuit Order entered November 8, 2004 (Appendix A-12), pages 1 & 2 second paragraphs (on both pages). 5 U.S.C. § 7703(a)(2).]. The Board did not address petitioner's discrimination allegations in its decision, and these claims



**APPENDIX — 6-A**

are not before the Court.

6. What relief do you want the court to take in this case?

The Court should affirm the Board's decision dismissing Ms. Johnson's appeal for lack of jurisdiction.

7. Do you want to argue before the court in person?

No. Oral argument is not necessary in this case.

Respectfully submitted,

MARTHA B. SCHNEIDER  
General Counsel

STEPHANIE M. CONLEY  
Reviewing Attorney

/s/\_\_\_\_\_  
CALVIN M. MORROW  
Attorney  
Office of the General Counsel  
Merit Systems Protection Board  
1615 M Street, NW  
Washington, DC 20419-0002  
(202) 653-6772 Ext 1280

December 20, 2004

**APPENDIX — 6-A**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE FEDERAL CIRCUIT**

**JOHNSON v MSPB**

**04-3452**

**Entry of Appearance**

(INSTRUCTIONS: Counsel refer to Federal Circuit Rule 47.3. Pro se petitioners and appellants read paragraphs 1 and 18 of the Guide for Pro Se Petitioners and Appellants. This form was prepared using information currently known in the Clerk's Office. If this information is incorrect or incomplete, please provide the correct information. File this form with the clerk and serve it on the principal attorney for each party.)

Please enter my appearance:

\_\_\_ Pro Se ☒ As counsel for:  
    U.S. Merit Systems Protection Board

**Name of Party**

I am, or the party I represent is (select one):

\_\_\_ Pro Se     ☒ Respondent  
              \_\_\_ Amicus Curiae  
\_\_\_ Appellant \_\_\_ Appellee  
              \_\_\_ Intervenor

As amicus curiae or intervenor, this party supports (select one):

\_\_\_ Petitioner or appellant   \_\_\_ Respondent or appellee

APPENDIX — 6-A

My address and telephone are:

Name: Calvin Morrow  
Law Firm (counsel only):  
U.S. Merit Systems Protection Board Address: 1615  
M Street, NW  
City, State, Washington, DC 20419  
and Zip:  
Telephone: (202) 653-6772 x 1280  
Fax: (202) 653-6203  
E-mail address \_\_\_\_\_

Statement to be completed by counsel only (select one):

X I am the principal attorney for this party in this case and will accept all service for the party. I agree to inform all other counsel for the party in this case of the matters served upon me.

\_\_\_\_\_ I am not the principal attorney for this party in this case.

Date admitted to Federal Circuit bar (counsel only): //

This is my first appearance before the U. S. Court of Appeals for the Federal Circuit (counsel only): \_\_\_\_ yes \_\_\_\_ no

\_\_\_\_\_ A courtroom accessible to the handicapped is required if oral argument is scheduled.

Date: 12/20/2004

/s/ Calvin M. Morrow  
Signature of Pro Se or Counsel

cc: Johnson

## **APPENDIX — 7-A**

### **APPENDIX TO RESPONDENT'S BRIEF**

#### **INDEX TO THE APPENDIX**

<b><u>Item</u></b>	<b><u>Page</u></b>
<b>MSPB Decision (July 12, 2004)</b>	<b>1</b>
<b>MSPB Initial Decision (Oct. 9, 2003)</b>	<b>7</b>
<b>Certified List</b>	<b>10</b>
<b>Notification of Personnel Action (Jan. 25, 1989)</b>	<b>14</b>
<b>Notification of Personnel Action (Oct. 2, 2001)</b>	<b>15</b>
<b>Termination Letter (June 20, 2003)</b>	<b>16</b>
<b>Petition for Review (Nov. 6, 2003) (excerpt)</b>	<b>18</b>

**APPENDIX — 7-A**

**UNITED STATES OF AMERICA**

**MERIT SYSTEMS PROTECTION BOARD**

**EVELYN L. JOHNSON,**

**DOCKET NUMBER AT-0752003-0934-I-1**

**Appellant,**

**v.**

**ADMINISTRATIVE OFFICE**

**OF THE U.S. COURTS,**

**Agency.**

**DATE: JUL 12, 2004**

**Dawn M. Rivera, Esquire,**

**Atlanta, Georgia, for the appellant.**

**Susan T. Kattan, Esquire,**

**Washington, D.C., for the agency.**

**BEFORE**

**Neil A. G. McPhie, Acting Chairman**

**Susanne T. Marshall, Member**

**OPINION AND ORDER**

¶1 The appellant has petitioned for review of an initial decision that dismissed her appeal as withdrawn. For the

## **APPENDIX — 7-A**

reasons set forth below, we DENY the appellant's petition for review, VACATE the initial decision, and DISMISS the appeal for lack of jurisdiction

### **BACKGROUND**

¶2 The appellant appealed her removal from her position with the Staff Attorneys' Office of the United States Court of Appeals for the Eleventh Circuit. Initial Appeal File (IAF), Tab 1. Shortly thereafter, the appellant's designated representative filed a Notice of Withdrawal of Appeal on the appellant's behalf. IAF, Tab 4. The administrative judge then issued an initial decision in which he dismissed the appeal as withdrawn. IAF, Tab 5.

¶3 The appellant, who is now pro se, has filed a petition for review of the initial decision in which she contends that she does not wish to withdraw her appeal, the agency misled her as to her appeal rights, and the Board has jurisdiction over her appeal because she is an excepted service employee with more than two years of current continuous service. Petition for Review (PFR) File Tab 1 at 2-3. Subsequent to the filing of her petition for review, the appellant submitted

## APPENDIX — 7-A

a number of additional pleadings in which she argues, inter alia, that the Board has jurisdiction over her case because she is a federal employee and because her case involves a mixed-case appeal. PFR File, Tab 4 at 3; Tab 5 at 2; Tab 7 at 2-3; Tab 8 at 4; Tab 11 at 4. The agency has responded in opposition to the PFR, arguing that the Board lacks jurisdiction over the appeal because the appellant is an employee of the judicial branch and does not have Board appeal rights under 5. U.S.C. § 7511(a). PFR File, Tab 6 at 4.

## ANALYSIS

¶4 The Board normally will not consider evidence or argument filed after the close of the record on review. See, e.g., *Brown v. Department of Defense*, 94 M.S.P.R. 669, ¶ 4 (2003); *Gray v. U.S. Postal Service*, 93 M.S.P.R. 161, ¶ 9 (2002). Further, the Board normally does not consider evidence and argument which was not provided to the administrative judge. See, e.g., *Turner v. U.S. Postal Service*, 90 M.S.P.R. 385 ¶ 5 (2001); *Banks v. Department of the Air*

## APPENDIX — 7-A

Force, 4 M.S.P.R. 268, 271 (1980); *Avansino v. U.S. Postal Service*, 3 M.S.P.R. 211, 214 (1980). Here, however, because the appellant withdrew her appeal before the agency was required to submit its file, the record below was wholly undeveloped on the matter of jurisdiction. Both parties have now fully addressed the issue of jurisdiction on review and, under the unique circumstances of this case, we find it appropriate to consider all of the pleadings filed, even though some of them were submitted after the close of record on review without a showing that they were based on new and material evidence not available before the record closed. *Cf. Turner*, 90 M.S.P.R. 385, ¶ 5 (the Board considered evidence and argument concerning jurisdiction submitted for the first time on review); *Black v. Department of Housing & Urban Development*, 78 M.S.P.R. 561, 565-66 (1998) (same).

¶5 The Board's jurisdiction is not plenary, but is limited to those matters over which it has been given jurisdiction by law, rule, or regulation. *See, Lovoy v. Department of Health & Human Services*, 91 M.S.P.R. 506 ¶ 6 (2002). While the



## APPENDIX — 7-A

Board is empowered by statute to hear appeals of removals from the Federal service, 5 U.S.C. § 7512(1), 7513(D), 7701(a), the right to appeal an action to the Board is limited to those persons who meet the definition of "employee" set forth in 5 U.S.C. § 7511(a)(1).

¶6 There are several ways to meet the statutory definition of "employee." One is to be an individual in the competitive service who has completed a probationary period or trial period under an initial appointment or who has completed one year of current continuous service under other than a temporary appointment limited to one year or less. 5 U.S.C. § 7511(a)(1)(A). A second way is to be a preference eligible individual in the excepted service who has completed one year of current continuous in the same or similar positions in an executive agency, the United States Postal Service, or the Postal Rate Commission. 5 U.S.C. § 7511(a)(1)(B). A third way is to be a nonpreference eligible individual in the excepted service who is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service or similar

## APPENDIX — 7-A

positions in executive agency under other than a temporary appointment limited to two years or less. 5 U.S.C. § 7511(a)(1)(c).

¶7 The “competitive service” consists of all civil service positions in the executive branch (with a few exceptions not relevant to this case), as well as certain positions not in the executive branch which are specifically included in the competitive service by statute. 5 U.S.C. § 2101(a). Thus, whether the individual is in the competitive service or the excepted service, an individual’s position must either be a position in executive agency or a non-executive agency position specifically included by the statute in the competitive service if she is to have appeal rights to the Board.

¶8 The term “executive agency” includes an executive department, a government corporation, and an independent establishment. 5 U.S.C. § 105. It manifestly does not include any court or instrumentality within the judicial branch. *Hartman v. Merit Systems Protection Board*, 77 F.3d 1378, 1379, 1381, (Fed. Cir. 1996).

## APPENDIX — 7-A

¶9 The appellant does not contend that she is an executive branch employee; she merely contends that she is a federal employee. Although the appellant was undoubtedly employed by an organ of the United States Government, she was a judicial branch employee, not an executive branch employee. The agency has submitted copies of judicial branch analogues to the executive branch Standard Form 50 which clearly demonstrate that the appellant is an employee of the judicial branch. PFR File, Tab 6 at 7-8. The appellant does not dispute the authenticity or import of these documents and, in fact, she submits the identical documents into the record herself. PFR File, Tab 7, Exhibit 3 at 7. We find, therefore, that the appellant is an employee of the judicial branch. Because the appellant is not an executive branch employee, the Board lacks jurisdiction over her appeal. *Cf. Hartman*, 77 F.3d at 1380-81 (the Board lacked jurisdiction over an individual right of action (IRA) appeal brought under 5 U.S.C. § 1221 by a judicial branch employee of an executive agency or the Government Printing Office.).

¶10 Finally, we note that, although the appellant argues

## APPENDIX — 7-A

that her position is in the competitive service, we have considered whether her position could be deemed to be in the competitive service and we find that it cannot. There is no statute which specifically includes the appellant's position in the competitive service. See 5 U.S.C. § 2102(a)(2). Positions in the United States Circuit Courts of Appeals are governed by 28 U.S.C. § 711 *et seq.* None of those statutory provisions state that the judicial branch positions to which they apply are included in the competitive service. See 28 U.S.C. §§ 711 (clerks, clerks' deputies, and clerks' assistants), 712 (law clerks and judges' secretaries), 713 (librarians and librarians' assistants), 714 (criers and messengers), 715 (staff attorneys, their secretarial and clerical employees, and technical assistants.)

### ORDER

¶11 This is the final decision of the Merit Systems Protection Board in this appeal. Title 5 of the Code of Federal Regulations, section 1201.113(c) (5 C.F.R. § 1201.113(c).

## **APPENDIX — 7-A**

### **NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS**

You have the right to request the United States Court of Appeals for the Federal Circuit to review this final decision. You must submit your request to the court at the following address:

United States Court of Appeals  
for the Federal Circuit  
717 Madison Place, N.W.  
Washington, D.C. 20439

The court must receive your request for review no later than 60 calendar days after your receipt of this order. If you have a representative in this case and your representative receives this order before you do, then you must file with the court no later than 60 calendar days after receipt by your representative. If you choose to file, be very careful to file on time. The court has held that normally it does not have the authority to waive this statutory deadline and that filings that do not comply with the deadline must be dismissed. See *Pinat v. Office of Personnel Management*, 931 F.2d 1544 (Fed. Cir. 1991).

## APPENDIX — 7-A

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 (5 U.S.C. § 77703). You may read this law as well as review the Board's regulations and other related material at our web site,

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FOR THE BOARD

/s/ Bentley M. Roberts, Jr.  
Bentley M. Roberts, Jr.  
Clerk for the Board

Washington, D.C.

**APPENDIX — 8-A**

**UNITED STATES OF AMERICA**

**MERIT SYSTEMS PROTECTION BOARD**

**ATLANTA REGIONAL**

**EVELYN L. JOHNSON,**

**DOCKET NUMBER AT-0752-03-0934-1-1**

**Appellant,**

**v.**

**ADMINISTRATIVE OFFICE**

**OF THE U. S. COURTS,**

**Agency.**

**Date: Oct 9, 2003**

**Dawn M. Rivera, Esquire**

**Atlanta, Georgia, for the appellant.**

**No appearance for the agency.**

**BEFORE**

**Anthony W. Cummings**

**Administrative Judge**

**INITIAL DECISION**

**On September 9, 2003, Evelyn Johnson filed an  
appeal with the Board's Atlanta Regional Office from the**



## **APPENDIX — 8-A**

agency's action removing her from her position as Human Resources Coordinator, effective June 27, 2003. Appeal File, Tab 1. On October 8, 2003, the appellant informed this office of her desire to withdraw the instant appeal via a signed written correspondence.

The appellant's withdrawal is an act of finality. See *Luellen v. U. S. Postal Service*, 88 M.S.P.R. 11, 16 (2001).

### **DECISION**

The appeal is DISMISSED.

FOR THE BOARD:

/s/ Anthony W. Cummings  
Anthony W. Cummings  
Administrative Judge

### **NOTICE TO APPELLANT**

This initial decision will become final on November 13, 2003, unless a petition for review is filed by that date or the Board reopens the case on its own motion. This is an important date because it is usually the last day on which you can file a petition for review with the Board. However, if this initial decision is received by you more than 5 days after the date of issuance, you may file a petition for review within 30 days after the date you actually receive the initial decision. The date on which the initial decision becomes final also controls when you can file a petition for review



## **APPENDIX — 8-A**

with the Court of Appeals for the Federal Circuit. The paragraphs that follow tell you how and when to file with the Board or the federal court. These instructions are important because if you wish to file a petition, you must file it within the proper time period.

### **BOARD REVIEW**

You may request Board review of this initial decision by filing a petition for review. Your petition, with supporting evidence and argument, must be filed with:

The Clerk of the Board  
Merit Systems Protection Board  
1615 M Street, NW  
Washington, DC 20419

If you file a petition for review, the Board will obtain the record in your case from the administrative judge and you should not submit anything to the Board that is already part of the record. Your petition must be postmarked, faxed, or hand-redelivered no later than the date this initial decision becomes final, or if this initial decision is received by you more than 5 days after the date of issuance, 10 days after the date you actually receive the initial decision. If you fail to provide a statement with your petition that you have either mailed, faxed, or hand-delivered a copy of your petition to the agency, your petition will be rejected and returned to you.

### **JUDICIAL REVIEW**

If you are dissatisfied with the Board's final decision, you may file a petition with:

The United States Court of Appeals  
for the Federal Circuit  
717 Madison Place, NW  
Washington, DC 20439

## APPENDIX — 8-A

You may file your petition with the court before this decision becomes final. To be timely, your petition must be received by the court no later than 60 calendar days after the date this initial decision becomes final.

### NOTICE TO AGENCY/INTERVENOR

The agency or intervenor may file a petition for review of this initial decision in accordance with the Board's regulations.

.....

**U. S. MERIT SYSTEMS PROTECTION BOARD**  
**Office of the Clerk of the Board**  
**1615 M Street, NW**  
**Washington, DC 20419-0002**  
Phone: 202 653-7200, Fax: 202-653-7130 E-Mail

---

04-3452

### ATTESTATION

I HEREBY ATTEST that the attached index represents a list of the documents comprising the administrative record of the Merit Systems Protection Board in the appeal of Evelyn L. Johnson v. Administrative Office Of The U.S. Courts, MSPB Docket No. AT-0752-03-0934-1-1, and that the administrative record is under my official custody and control on this date.

on file in this Board.

September 28, 2004  
Date

/s/  
Bentley M. Roberts, Jr.  
Clerk of the Board

**APPENDIX — 8-A**

**INDEX**

**EVELYN L. JOHNSON**

**v.**

**ADMINISTRATIVE OFFICE OF THE U. S. COURTS**

**Docket No. AT-0752-03-0934-I-1**

**Volume I**

TAB	DOCUMENT DESCRIPTION	DATE OF RECEIPT OR ISSUANCE
1	Initial Appeal to MSPB	Sept. 23, 2003
2	Acknowledgment Order	Sept. 25, 2003
3	Appellant Designation of Rep.	Sept. 26, 2003
4	Appellant: withdrawn request	October 8, 2003
5	Initial Decision	October 9, 2003

**APPENDIX 8-A**

**INDEX**

**EVELYN L. JOHNSON**

**v.**

**ADMINISTRATIVE OFFICE OF THE U. S. COURTS**

**MPSB Docket No AT-0752-03-0934-I-1**

**IA-REFORM ACT MERIT - PETITION FOR REVIEW**

<b>TAB</b>	<b>DESCRIPTION OF DOCUMENT</b>	<b>DATE OF RECEIPT OR ISSUANCE</b>
1	Appellant - Petition for Review	Nov. 06, 2003
2	MSPB - Acknowledgment Letter	Nov. 10, 2003
3	Appellant-App'l's Filing of 11/12/03	Nov. 12, 2003
4	Appellant - App'l's Filing dated 11/14/03	Nov. 14, 2003
5	Appellant - App'l's Additional Submission to PFR	Nov. 24, 2003
6	Agency - Agency Response to App'l's PFR; Designation of Rep	Dec. 24, 2003
7	Appellant - Appl. Further response to initial decision	Dec. 29, 2003
8	Appellant - App'l's Additional Material Evidence	Dec. 29, 2003
9	Appellant - App'l's disclosure of Coverage	Jan. 08, 2004

## **APPENDIX — 8-A**

- 10    Appellant - Appl. Resp. To  
         Circuit Court of Appeals,  
         decision and Motion            Jan. 26, 2004
- 11    Appellant - Motion to Grant  
         Relief                            Feb. 18, 2004
- 12    Appellant - Additional Information  
         w/ Attachments (separate binder) April 13, 2004
- 13    Appellant - Supplemental  
         Materials (separate binder)        June 29, 2004
- 14    MSPB - Opinion and Order            July 12, 2004

## APPENDIX — 8-A

### ADMINISTRATIVE OFFICE OF THE U.S. COURTS

#### NOTIFICATION OF PERSONNEL ACTION (AO 250 -Form)

Date Typed — 01/25/89

1. Name Johnson, Evelyn L.	2. Sex F	3. DOB 10/23/51
4. SSN - 231-11-0983	5. Employment Not to Exceed N/A	6. SCD (Leave) 07/26/82
7. L.E.I - 01/17/89	8. WGI Due Date 01/29/90	
9. FEGLI - K (See Reverse Side for Explanation)	10. RETIREMENT - P (See Reverse Side for Explanation)	
11. Citizenship 1 (U.S.)	12. Type of Appointment FTP	
13. Annuitant Indicator 9 (N/A)	14. SCD (HAZ) N/A	
15. H.B. Code 452	15(a) Effective Date 01/17/89	
16. NOA 170A	(a) Nature of Action Excepted Appointment	
17. Effective Date 01/17/89	18. Authority AO 79 dated 1/17/89 & AO Letter Dated 11/15/88	
19. From Position N/A	20. Pay Plan N/A	21. Grade/ Step N/A

# APPENDIX — 8-A

22. Salary N/A	23(a) COLA N/A	23(b) Post Diff. N/A
-------------------	-------------------	-------------------------

23(c) Annuity N/A	24. Name and Location of Employing Office — N/A
----------------------	--

25. To: Position Title and Number Court Secretary (Staff Atty) 031011	26. Pay Plan JS 14
--	-----------------------

27. Grade/Step JSP 6/01	28. Salary \$19,297.00 PA	29(a) COLA N/A
----------------------------	------------------------------	-------------------

29 (b) Post Diff N/A	29(c) Annuity N/A
-------------------------	----------------------

30. Name and Location of Employing Office — A11XXXAAATGAN Eleventh Circuit 50 Spring Street, S.W To Position C8900255	31. Remarks From Position: Notice Sent to: Ms. Karen C. Wilbanks Employee transferred from Atlanta, GA 30303 the VA Regional Office without a break in service. Benefits remain in effect.
---	---

32. Vice New	33. JUDGES (a) Date of ONLY Nomination
-----------------	---

(b) Date of Confirmation	(c) Date of Commission	(d) Eligible to Retire
-----------------------------	---------------------------	---------------------------

34. Office Maintaining Personnel Folder  
Administrative Office of the U.S. Courts

35. Code JL01	Employing Department or Agency Judicial Branch
------------------	---

36(a) Signature (or other authentication) (b) Date  
Charlotte G. Peddicord

(c) Title — Human Resources Division

**APPENDIX — 8-A**

**ADMINISTRATIVE OFFICE OF THE U.S. COURTS**

**NOTIFICATION OF PERSONNEL ACTION  
(AO 250 - Form)**

Date Typed — 10/02/01

1. Name	2. Sex	3. DOB	4. SSN
Johnson, Evelyn L.	F	10/23/51	231-11-0983

5. Employment	6. SCD	7. L.E.I	8. WGI
Not to Exceed	(Leave)	09/10/01	Due Date
N/A	07/08/82		09/09/02

9. FEGLI	10. RETIREMENT
CO (See Reverse	K (See Reverse
Side for Expla-	Side for Explanation)
nation)	

11. Citizenship	12. Type of	13. Annuitant
1 (U.S.)	Appointment	Indicator
	FTP	9 (N/A)

14. SCD (HAZ)	15. H.B. Code	15(a) Effective
N/A	105	Date - 01/03/00

16. NOA	(a) Nature of Action	17. Effective Date
702	Promotion	09/10/01

18. Authority - PER AO-193 DATED 09/07/01

19. From Position	20. Pay Plan	21. Grade/Step
Sec. To Sr. SA	CPS	CL 25/45

22. Salary	23(a) COLA	23(b) Post Diff.
\$42,154.00 PA	N/A	N/A

23(c) Annuity	24. Name and Location
N/A	of Employing Office



# APPENDIX — 8-A

25. To: Position Title and Number  
Human Resources Coordinator

26. Pay Plan  
CPS

27. Grade/Step  
26/40

28. Salary  
\$44,780.00 PA

29(a) COLA  
N/A

(b) Post  
Diff.  
N/A

29(c) Annuity  
N/A

30. Name and Location of  
Employing Office —  
A11XXXAAATGAN  
Eleventh Circuit  
50 Spring Street, S.W  
Atlanta, GA 30303

32. Vice  
New  
Position  
To  
Position  
C8900255

31. Remarks

From Position: P8618299

Notice sent to: Ms. Naomi Godfrey

33. JUDGES  
ONLY

(a) Date of  
Nomination

(b) Date of  
Confirmation

(c) Date of  
Commission

(d) Eligible to  
Retire

34. Office Maintaining Personnel Folder  
Administrative Office of the U.S. Courts

35. Code  
JL01

Employing Department or Agency  
Judicial Branch

36(a) Signature (or other authentication) (b) Date  
Charlotte G. Peddicord

(c) Title — Human Resources Division

[Pet.'s Note: The referenced two official Notification of Personnel Action (AO-250 Form) hardly show the complete and true picture of Petitioner's allegations of intentional discrimination and disparate treatment due to non promotion. The employing office was trying to justify its adverse personnel action based on the promotion Petitioner received in September 2001.]

**APPENDIX — 8-A**

**UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT  
STAFF ATTORNEY'S OFFICE**

June 20, 2003

Mrs. Evelyn Johnson  
6241 South Skyline Dr.  
Douglasville, GA 30135

Dear Ms. Johnson:

I write to inform you that you are terminated from the Staff Attorneys' Office. This action has become necessary because of your insubordinate behavior, unsatisfactory work, and inappropriate conduct in the discharge of your responsibilities. I am mindful of your years of service to the court and this office and I take this action only after extremely careful consideration and due reflection. This decision is based on the recommendation of your immediate supervisor, the reports of others, and my personal observations of your conduct and performance.

Although you have been given every consideration, your work performance over the last year has been unacceptable. Since January 21, 2002, when Sara Gilibert began work in the office and became your immediate supervisor, your performance has been unsatisfactory and continues to decline. She has repeatedly advised you to correct your performance deficiencies and tried to enlist your support in performing the personnel duties of the office. Despite Ms. Gilibert's best efforts, your continued failure to follow her directives, your insubordination to her, your failure satisfactorily to perform your assigned duties, and your refusal to communicate with her and other administrative staff have resulted in inefficient operations in this office. You have been repeatedly counseled, admonished, and warned that such conduct will not be tolerated and will result in disciplinary action if not corrected. Yet, you continue to fail to carry out your assignments and responsibilities or to work with Sara Gilibert in a satisfactorily manner.

## APPENDIX — 8-A

Because of these continuous unacceptable actions and behavior, you will no longer be accorded the privilege to work for the court and this office. The situation has become one that this office institutionally will not tolerate. Accordingly, and as a result of your unacceptable performance, you are hereby terminated from your position with the Staff Attorney's Office. This termination will be effective June 27, 2003, at the close of business. Under the authority of the Court's Adverse Action Plan and with the Court's approval, I am placing you immediately in a nonduty status with pay through June 27, 2003. As an alternative, I will accept your resignation effective on or before Friday, June 27, 2003, close of business.

Consistent with APPENDIX II of the Personnel Manual, you have the right to make a written request of the chief judge or his designee within 10 calendar days of the date of your receipt of this letter for a hearing. You also have the right to be represented at the hearing, to confront adverse witnesses, and to present evidence and arguments. If this action is vacated as a result of the hearing before the chief judge or his designee, you will be returned to your status prior to the action as if no action has been taken and all documents will be removed from the record.

I regret having to take this action and wish you every success in your future endeavors.

Sincerely,

/s/ Naomi G. Godfrey

Naomi G. Godfrey

Senior Staff Attorney

**APPENDIX — 9-A**

6241 S. Skyline Drive  
Douglasville, Georgia 30135  
(770) 489-0343 (H) — (404) 402-3578 (Cell)

November 5, 2003

**VIA FACSIMILE AND U.S. MAIL**

The Honorable Anthony W. Cummings  
Administrative Judge  
U.S. Merit Systems Protection Board  
Atlanta Regional Office  
401 West Peachtree Street, N.W.  
10<sup>th</sup> Floor  
Atlanta, Georgia 30308-3519

[RECEIVED MSPB  
2003 NOV 10 PM 3:49  
CLERK OF THE BD]

RE: Case Docket Number AT-0752-03-0934-I-1, Evelyn L.  
Johnson v. Admin. Office of the U.S. Courts

Dear Judge Cummings:

This request serves as a Notice to the Board of my intent to Reopen and Reconsider the Board's initial decision of dismissing the instant appeal filed with the Board. The Board issued the Order dated October 9, 2003, and will become final on November 13, 2003. My request to reopen and reconsider the case describes further complainant rights and substantive protections and to correct any procedural error.

1. The agency improperly informed the employee of employment rights after agency dismissal of the complaint; the employee's dissatisfaction with the processing of the underlying complaint, substantial evidence standard review,

## APPENDIX — 9-A

and with the agency's final decision.

2. The agency may not dismiss a complaint without issuing a ruling on the merits of the complaint. Previous decision involved harmful error in interpretation of fact and law, federal regulations, and material fact or misapplication of established policy renders exceptional nature that the decision will have substantial impact and effect on the employee;

3. Complaint involves both issues related to OPM regulations and the agency's own actions in applying the regulations. 5 U.S.C. § 8402;

4. Uncertainty of procedures appropriate for U.S. courts' employees because it is not clear which statutes apply, agency's unresponsiveness and failure to comply with requests, and new material evidence. (Please see attached).

### MSPB Jurisdiction — Mixed case — Right to Appeal to MSPB. 5 U.S.C. § 1204

The Civil Service Reform Act (CSRA) of 1978 created the OPM to take over the administrative personnel functions of Civil Service Commission (CSC). The MSPB was established to take over the many adjudicative functions of the CSC and to adjudicate appeals from aggrieved federal employees. When a federal employee alleges discrimination stemming from the so called "prohibited personnel practices, it was intended that the MSPB handles both the personnel aspects of an appealable action as well as issues of discrimination raised by an employee." Legislative History of the Civil Service Reform Act of 1978, 96<sup>th</sup> Cong. 1<sup>st</sup> Sess.

1. MSPB has jurisdiction for unacceptable performance removal of non preference eligible excepted service employees with two or more years of current continuous service. 5 U.S.C. § 2103(b); 5 U.S.C. § 1221(a);

## APPENDIX — 9-A

2. Complaints of discrimination involving personnel actions, and the terms conditions, and privileges of employment, hostile work environment harassment based on discrimination, and retaliation for protected activities; 5 CFR parts 831, 841, 844, and 846; 5 U.S.C. §§ 8347(d)(1)-(2) and 8461(e)(1); and 5 U.S.C. § 8331;

3. The complaint involves personnel actions within the jurisdiction of the MSPB, which raised an allegation of discrimination. The underlying complaint of intentional employment discrimination was based on race, color, sex, national origin, and age, stemming from allegations that involved matters within the jurisdiction of both the MSPB and EEOC. The EEOC jurisdiction extends to all personnel actions as well as the terms, conditions, and privileges of employment based on race, sex, color, age, and national origin, and jurisdiction over reprisal because of participation in the EEO process. As cited herein, discrimination on the bases of race, color, sex, age, national origin in the federal government is prohibited by the statute. *The Civil Rights Act of 1964, Amended in 1972 by Pub.L.No. 92-26; 42 U.S.C. §§ 2000e-16 et seq.; the Civil Rights Act of 1991, Pub.L.No. 102-166 (November 21, 1991); 29 CFR §§ 1614.302(a)(1) & (a)(2); 29 U.S.C. § 2039(d); 2 U.S.C. § 1434.*

Thank you for your kind assistance and consideration concerning this matter. Please direct correspondence to the employee's retained counsel, Dawn M. Rivera, 44 Broad Street, N.W., Suite 222, The Grant Building, Atlanta, Georgia 30303. Telephone (404) 542-9111. Fax (404) 524-6611

Respectfully submitted,

/s/ Evelyn L. Johnson  
Evelyn L. Johnson



**APPENDIX — 10 -A**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

**EVELYN L. JOHNSON**

**Petitioner,**

**v.**

**ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS,**

**Respondent.**

**04-3452**

**ORDER**

After review and consideration of the Administrative  
Office of the United States Court's motion to recaption and  
designate the Merit Systems Protection Board as respondent,

**IT IS ORDERED THAT:**

The motion is granted.

**FOR THE COURT**

**DATED:** \_\_\_\_\_

**Copies to:**

Evelyn L. Johnson  
6241 S. Skyline Drive  
Douglasville, GA 30135  
Phyllis Jo Baunach  
Commercial Litigation Branch  
Civil Division

**APPENDIX — 10 -A**

U.S. Department of Justice  
Attn: Classification Unit  
1100 L St. N.W.  
Washington, D.C. 20530

Sara B. Reardon, Esq.  
Office of General Counsel  
Merit Systems Protection Board  
1615 M Street NW, Rm. 609  
Washington, D.C. 20419

Susan Kattan, Esq.  
Assistant General Counsel  
Administrative Office of the U. S. Courts  
One Columbus Circle, N.E.  
Washington, D.C. 20544

NOV 18 2004

JAN HORBALY/jb

RECEIVED  
2004 NOV - 9 PM 4:37  
US COURT OF APPEALS  
FEDERAL CIRCUIT



IN THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

Evelyn L. Johnson,	)	
	)	
Petitioner,	)	
	)	
v.	)	04-3452
	)	
ADMINISTRATIVE OFFICE OF	)	
THE UNITED STATES COURTS,	)	
	)	
Respondent.	)	
_____	)	

**RESPONDENT'S MOTION TO RECAPTION**

Pursuant to Federal Circuit Rule 27, respondent, the Administrative Office of the United States Courts, respectfully requests that the Court recaption this case to designate the Merit Systems Protection Board ("MSPB" or "board") as the respondent. Ms. Johnson states that she opposes this request.

The MSPB states that the case should be recaptioned. Petitioner, Evelyn L. Johnson, timely appealed to the MSPB an adverse action that removed her from employment with the Staff Attorney's Office of the United States Court of Appeals for the Eleventh Circuit. App. 1, ¶ 2.<sup>1</sup> Subsequently, Ms. Johnson's designated representative filed a notice of Withdrawal of Appeal upon behalf of Ms. Johnson, and, without addressing the merits of the case, the administrative judge issued an initial decision dismissing the appeal as withdrawn. App 1, ¶ 2.

---

<sup>1</sup> "App. \_\_\_, ¶ \_\_\_" refers to the page of the appendix and the paragraph number of the opinion attached to this motion.

## APPENDIX — 11-A

On July 12, 2004, the full board denied Ms. Johnson's petition for review of the initial decision, vacated the initial decision and dismissed the appeal for lack of jurisdiction. App. 1, ¶ 1. Without addressing the merits of Ms. Johnson's appeal, the board reviewed all of the evidence regarding the jurisdictional issue. App 1-2, ¶ 4, ¶ 9. Specifically, the board noted that the right to appeal an action to the board is limited to persons who meet the definition of "employee," as set forth in 5 U.S.C. § 7511 (a) (1). App 2, ¶ 5.

The board carefully reviewed the criteria for "employee," as set forth in 5 U.S.C. § 7511 (a) (1), and whether Ms. Johnson met any of the criteria. App. 2, ¶ 6. An individual may be considered as an "employee," if she is in the competitive service and has completed a probationary period or trial period under an initial appointment or has completed one year of current continuous service under other than a temporary appointment limited to one year or less. 5 U.S.C. § 7511 (a) (1) (A). App. 2, ¶ 6. Additionally, an "employee" is a person who is a preference eligible individual in the excepted service and has completed one year of current continuous service in the same or similar positions in an executive agency, the United States Postal Service, or the Postal Rate Commission. 5 U.S.C. § 7511 (a) (1) (B). App. 2, ¶ 6. Finally, an "employee" is a nonpreference eligible individual in the excepted service who is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service, or who has completed two years of current continuous service in the same or similar positions in an executive agency under other than a temporary appointment limited to two years or less. 5 U.S.C. § 7511 (a) (1) (C). App 2 ¶ 6.

Additionally, the board noted that pursuant to 5 U.S.C. § 2101 (a), whether an individual is in the competitive service or the excepted service, the individual's position must either be a position in an executive agency or a non-executive agency position specifically included by statute in the competitive service if she is to have appeal rights to the

## APPENDIX — 11-A

board. App. 2, ¶ 7. The board also pointed out that term "executive agency: includes an Executive Department, a Government corporation, and an independent establishment, 5 U.S.C. § 105, and does not include any court or instrumentality within the Judicial Branch. App. 2 ¶ 8. Based upon personnel files, the board found that Ms. Johnson was an employee of the Judicial Branch. App. 3 ¶ 9. Because Ms. Johnson was not an Executive Branch employee, the board concluded that it lacked jurisdiction to entertain her appeal. App. 3, ¶ 9.

Pursuant to 5 U.S.C. § 7703 (a) (2), the board is the proper respondent to a petition for review in this Court "unless the [petitioner] seeks review of a final order or decision on the merits of the underlying personnel action or on a request for attorney fees." Because Ms. Johnson's petition challenges a decision concerning only the board's jurisdiction to hear the appeal, and not the merits, the board, not the agency, is the proper respondent. **[Pet.'s Note: Petitioner challenges the decision on the merits at the outset of filing this claim; therefore, the Respondent should be the Agency.]** The respondent and the board agree that the MSPB's dismissal of Ms. Johnson's appeal for lack of jurisdiction is not "*a final order or decision on the merits of the underlying personnel action,*" see 5 U.S.C. § 7703 (a) (2), and that the MSPB is the proper respondent in this case. Spruill v. Merit Systems Protection Board, 978 F.2d 679 689 (Fed. Cir. 1992).

Accordingly, we respectfully request the Court grant this motion and substitute the Merit Systems Protection Board as the respondent. A proposed order is attached.

Respectfully,

PETER D. KEISLER  
Assistant Attorney General

**APPENDIX — 11-A**

**DAVID M. COHEN**  
Director

/s/ PHYLLIS JO BAUNACH  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
Department of Justice  
Washington, D. C. 20530  
(202) 307-5832  
(202) 307-0972 [Fax]

**November 9, 2004**

**Attorneys for Respondent**

**APPENDIX — 12-A**

NOTE: Pursuant to Fed. Cir. 47.6, this order is not citable as precedent. It is a public order.

**United States Court of Appeals**

**for the Federal Circuit**

04-3452

**EVELYN L. JOHNSON**

**Petitioner,**

**v.**

**MERIT SYSTEMS PROTECTION BOARD,**

**Respondent.**

**ON MOTION**

Before GAJARSA, Circuit Judge.

**ORDER**

Evelyn L. Johnson submits 12 copies of her brief, one copy of a multi-volume appendix, and a "motion for relief," which the court treats as a motion for leave to file a supplement to her brief, with supplement attached. The court considers whether the caption should be reformed to designate the Merit Systems Protection Board as respondent in place of the Administrative Offices of the U. S. Courts

## APPENDIX — 12-A

(AO) and whether the requirements of Fed. Cir.R.30(a)(5) should be waived to allow Johnson to file fewer than 12 copies of her appendix with the court.

Pursuant to 5 U.S.C. § 7703(a)(2), the Board is designated as the respondent when the Board's decision concerns solely the procedure or jurisdiction of the Board. See Spruill v. Merit Sys. Protection Bd., 978 F.2d 679, 686 (Fed. Cir. 1992). The employing agency is designated as the respondent when the Board reaches the merits of the underlying case. Id.

Johnson appealed her termination from the position of human resources coordinator for the Office of the Senior Staff Attorney of the United States Court of Appeals for the Eleventh Circuit. The Board issued a final decision dismissing Johnson's appeal for lack of jurisdiction, concluding that Johnson was an employee of the judicial branch lacking Board appeal rights under 5 U.S.C. § 7511(a).

Because the Board's ruling was limited to a jurisdictional determination and did not address the underlying merits pertaining to Johnson's

APPENDIX — 12-A

termination, the Board is the proper respondent in this petition for review. See Spruill, 978 F.2d at 686.

Accordingly,

IT IS ORDERED THAT:

(1) The motion for leave to supplement the brief is granted.

(2) The revised official caption is reflected above.

(3) The AO is directed to promptly transmit to the Board copies of all documents that Johnson served on it and all documents that the AO filed with the court.

(4) Upon receipt by the clerk's office of three more complete copies of Johnson's appendix, the court will file Johnson's brief, supplement to the brief, and appendix.

(5) The Board's brief, either formal or informal, is due within 40 days of the date of filing of this order.

Nov - 8 2004

Date

/s/ Arthur J. Gajarsa

Arthur J. Gajarsa

Circuit Judge

cc: Evelyn L. Johnson  
Phyllis Jo Baunach, Esq  
Lynn Jennings, Esq.

Filed  
U.S. Court of Appeals  
for the Federal Circuit

Nov - 8 2004

04-3452

/s/ Jan Horbaly, Clerk



**APPENDIX — 13-A**

**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

**NOTICE OF DOCKETING**

**04-3452 - JOHNSON V AO**

**09/14/04**

**(Date of Docketing)**

**Petition for review of:**

**MERIT SYSTEMS PROTECTION BOARD**

**AT0752030934-I-1**

**Name of petitioner: EVELYN L. JOHNSON**

**Critical dates for counsel, pro se parties, agencies, the  
board, and arbitrators include:**

**Date of docketing, as above (Rules 12 & 15)**

**Certified list due (Rule 17)**

**Entry of appearance due (Rule 47.3)**

**Certificate of interest due (Rule 47.4)**

**Statement concerning discrimination due (Fed. Cir.  
R. 15(c))**

**Briefs due (Rule 31). Pro se parties must not  
file the informal brief until after the certified  
list has been filed and served. "You will not  
receive a separate briefing schedule from the  
Clerk's Office."**

**Calendar for oral argument or submission on  
briefs (Rule 34 & Practice Note) - Please notify  
the Clerk's Office of any possible conflicts as  
soon as possible.**

**Filing fee due (Rule 52)**

**Pro se parties should refer to the GUIDE FOR PRO SE  
PETITIONERS AND APPELLANTS.**

**Attachments (with recipients noted) to this notice include;**

**Official caption (All)**

## APPENDIX — 13-A

Rules of Practice (pro se parties - attorneys must return the form below)

Entry of appearance form (All counsel and pro se parties)

Statement concerning discrimination (MSPB petitioners)

Informal brief form (Pro se parties)

Copy of Rule 15 petition for review (board and counsel for respondents)

Motion and Affidavit for Leave to Proceed in Forma Pauperis form (Parties owing the docketing fee)

JAN HORBALY, Clerk

cc: David M. Cohen, Department of Justice 1100 L Street, N. W. Room 12124 Washington, DC 20419  
Clerk, Merit Systems Protection Board, Washington, DC 20419

Evelyn L. Johnson

The Federal Circuit's Rules of Practice are available by calling (202) 633-6550, and the Rules are likewise available for downloading at \_\_\_\_\_

**APPENDIX — 13-A**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE FEDERAL CIRCUIT**

**Official Caption<sup>1</sup>**

04-3452

EVELYN L. JOHNSON,

Petitioner,

v.

ADMINISTRATIVE OFFICE  
OF THE U. S. COURTS,

Respondent.

Petition for review of the Merit Systems Protection Board in  
AT0752030934-1-1.

---

<sup>1</sup> Required for use on petitions, formal briefs and appendices, court opinions, and dispositive court orders. FRAP 12(a); 32(a).

**APPENDIX — 13-A**

**Authorized Abbreviate Caption<sup>2</sup>**

**UNITED STATES COURT OF APPEALS**

**FOR THE FEDERAL CIRCUIT**

**JOHNSON V AO**

**04-3452**

**Entry of Appearance**

(INSTRUCTIONS: Counsel refer to Federal Circuit Rule 47.3. Pro se petitioners and appellants read paragraphs 1 and 18 of the Guide for Pro Se Petitioners and Appellants. This form was prepared using information currently known in the Clerk's Office. If this information is incorrect or incomplete, please provide the correct information. File this form with the clerk and serve it on the principal attorney for each party.)

Please enter my appearance:

☒ Pro Se \_\_\_ As counsel for: EVELYN L. JOHNSON

I am, or the party I represent is: Petitioner: Petitioner

As amicus curiae or intervenor, this party supports (select

---

<sup>2</sup> Authorized for use only on items not requiring the Official Caption as listed in note 1.

**APPENDIX — 13-A**

one):

☐ Petitioner or appellant ☐ Respondent or appellee

Evelyn L. Johnson  
6241 S. Skyline Drive  
Douglasville, GA 30135  
770-489-0343

Appearing pro se

Fax #: 770-489-0343

E-mail Address: \_\_\_\_\_

Statement to be completed by counsel only (select one):

☐ I am the principal attorney for this party in this case and will accept all service for the party. I agree to inform all other counsel for the party in this case of the matters served upon me.

☐ I am not the principal attorney for this party in this case.

Date admitted to Federal Circuit bar (counsel only): / /

This is my first appearance before the U. S. Court of Appeals for the Federal Circuit (counsel only): ☐ yes ☐ no

Date: 9/09/2004 /s/ Evelyn L. Johnson

Date notice issued: 9/14/04 Signature of Pro Se  
or counsel

APPENDIX — 13-A

04-3452

UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

Petition for Review or Notice of Appeal of an Order  
or Decision of the MSPB Board  
in Docket No. AT-0752-03-0934-I-1

Evelyn L. Johnson,

Petitioner,

v.

Staff Attorneys' Office (SAO) and Supervising Employees,  
et al., Employing Office,  
Acting on Behalf of the Administrative Office (AO) of the  
U. S. Courts,

Agency,  
Respondents.

Evelyn L. Johnson, hereby petitions/appeals the court  
for review of the MSPB Board's decision of the SAO, acting  
on behalf of the Agency, the AO, entered on July 12, 2004.

9 September 2004

Date

/s/ Evelyn L. Johnson

Evelyn L. Johnson

Pro Se Petitioner

RECEIVED

SEP 13, 2004

United States

Court of Appeals

For the Federal Circuit

6241 S. Skyline Drive

Douglasville, GA 30135

(770) 489-0343

UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

Evelyn L. Johnson v. Administrative Office of the U. S.  
Courts

No. 04-3452

Petitioner's Fed.Cir.R.15 (c) Statement Concerning  
Discrimination

**Continuation:**

Because of the unique nature of this case, Petitioner asserts this case was handled and processed in the district court, Northern District of Georgia, since the proceedings were administered by magistrate court judges, and final decision(s) of the hearing officers were affirmed by the chief appellate judge of this court. This case involves three major issues of discrimination and disparate treatment filed under Title VII, Civil Rights Act of 1964: 1) filing of the EDR discrimination complaint in 2002; 2) retaliatory termination of a tenured civil service employee in June 2003; 3) and the retaliatory termination was in retaliation and a result of filing the 2002 EDR complaint.

The case before this Court was intentional discrimination and disparate treatment filed with the employing office, U. S. Court of Appeals for the Eleventh Circuit, Staff Attorneys' Office (SAO), at the initial filing of the complaint in March 2002. While the other party to this case was the Administrative Office of the U.S. Courts (AO), employing office conducted the administrative proceedings from start to finish. All documents and material evidence pertaining to the entire case were also handled by the employing office, and Petitioner is uncertain if the employing



## APPENDIX — 13-A

office provided documents and material evidence to the agency, the AO.

At the outset of the filing of the initial complaint, allegations of discrimination, factual disputes, substantial material evidence were presented at the hearing(s), but those issues, allegations, and numerous factual disputes were addressed inappropriately. Petitioner also filed a discrimination case in the Equal Employment Opportunity Commission, but the file was returned to the Petitioner for "lack of jurisdiction." Although Petitioner incurred substantial tangible and intangible damages, this case has not been reviewed on its entirety, on its merits, and was never given an opportunity for an appropriate and impartial judicial review.

September 9, 2004

Date

/s/ Evelyn L. Johnson

Evelyn L. Johnson

Pro Se Petitioner

6241 S. Skyline Drive

Douglasville, GA 30135

**APPENDIX — 14-A**

**UNITED STATES COURT OF APPEALS  
Eleventh Circuit**

---

Room 416, 56 Forsyth Street  
Atlanta, Georgia 30303

**J.L. EDMONDSON**  
Chief Judge

16 January 2004

Dawn M. Rivera, Esq.  
Melville & Johnson, P.C.  
44 Broad Street, N.W.  
Suite 222, The Grant Building  
Atlanta, Georgia 30303

Re: October 27, 2003 EDR Complaint of Evelyn L.  
Johnson

Dear Ms. Rivera:

Enclosed please find my final decision in the above-  
referenced matter.

Sincerely,

/s/ J.L. Edmondson  
J.L. Edmondson  
Chief of the Eleventh

cc: Honorable Gerrilyn G. Brill  
Mr. Jeffrey O. Bramlett, Esq.  
Mr. Ronan P. Doherty, Esq.  
Ms. Evelyn L. Johnson

**APPENDIX — 14-A**

**UNITED STATES COURT OF APPEALS**

**FOR THE ELEVENTH CIRCUIT**

**EMPLOYMENT DISPUTER RESOLUTION**

**PROCEEDING**

**IN RE: Complaint of Evelyn Johnson**

**ORDER**

On 27 October 2003, Evelyn Johnson ("Petitioner") filed an Employment Dispute Resolution ("EDR") complaint contending that the Staff Attorneys' Office for the Eleventh Circuit Court of Appeals ("SAO") wrongfully terminated her employment on the basis of her national origin, and "perceived disability," and in retaliation for having filed a prior EDR complaint and using FMLA leave.

On 1 December 2003, I referred the matter to Magistrate Judge Gerrilyn Brill to determine, among other things, whether live issues remained to prevent Petitioner's employment from being terminated.

On 8 December 2003, Judge Brill conducted a hearing at which the parties were given the opportunity to present evidence on the issue of whether Petitioner's claim was

## APPENDIX — 14-A

procedurally barred. On 17 December 2003, Judge Brill issued her decision concluding and finding that Petitioner's complaint is procedurally barred and should be dismissed.

Upon independent review of Judge Brill's 17 December 2003 recommendation, and of the transcript of the underlying hearing, I accept, approve, and adopt Judge Brill's conclusion and finding; and I have decided that Petitioner's Employment Dispute Resolution complaint is procedurally barred. Accordingly, Petitioner's complaint is DISMISSED.

DONE AND ORDERED this 16<sup>th</sup> day of January 2004.

/s/ J.L. EDMONDSON

CHIEF JUDGE

**APPENDIX — 14-A**

**UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT**

---

Room 416, 56 Forsyth Street  
Atlanta, Georgia 30303

**J.L. EDMONDSON  
CHIEF JUDGE**

1 December 2003

Dawn M. Rivera, Esq.  
Melville & Johnson, P.C.  
44 Broad Street, N.W.  
Suite 222, The Grant Building  
Atlanta, Georgia 30303

Dear Ms. Rivera:

Thank you again for your letter of 19 November. I am writing to reply.

I have gone over the file. I am inclined to think it is very possible that your client is precluded from proceeding further with her complaint under the Employment Dispute Resolution Plan by virtue of having abandoned or waived—mainly by delay—her claims during the process. I am inclined to think it is also very possible that your client's claims and issues are precluded by virtue of her parallel assertion under the Adverse Personnel Action Policy, which has been heard and concluded. But I reserve judgment on these points.

Instead, out of an effort to be abundantly fair to your client, I am asking Judge Brill to review your client's EDR assertions in the light of the pertinent EDR Plan and the Adverse Personnel Action hearing to determine whether

## APPENDIX — 14-A

there are questions properly presented and maintained in the EDR proceeding that are not precluded. If Judge Brill concludes that live questions remain per EDR, then I ask Judge Brill to hold an appropriate hearing on these questions and give me her independent view of their merits.

At the conclusion of the next hearing—if Judge Brill determines that such a hearing is necessary—then I would want to have Judge Brill's judgment and findings on each and every question that has not yet been answered. If Judge Brill concludes no live questions remain to be heard, I ask her to advise me of that conclusion in writing. Most important, I would want Judge Brill's decision considering the EDR Plan, on whether your client's employment is now ripe to be legitimately terminated without delay.

Sincerely,

/s/ J.L. Edmondson

J.L. EDMONDSON

Chief of the Eleventh

Copies to:

Honorable Gerrilyn G. Brill  
Jeffrey O. Bramlett, Esq.  
Naomi Godfrey, Esq.  
Ms. Evelyn Johnson

APPENDIX — 14-A

UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT

---

Room 416, 56 Forsyth Street  
Atlanta, Georgia 30303

J.L. EDMONDSON  
CHIEF JUDGE

1 December 2003

Honorable Gerrilyn G. Brill  
United States Magistrate Judge  
United States District Court  
1690 Richard B. Russell Federal Building  
75 Spring Street, S.W.  
Atlanta, Georgia 30303-3361

Re: Evelyn Johnson

Dear Judge Brill:

Thank you for the work that you have done on this employment matter. Your efforts are a real help to me and to this Court.

A question has arisen about whether the decision on the Adverse Action Proceeding effectively ruled on all of Ms. Johnson's claims and contentions dealing with her employment here at the Court of Appeals.

I am enclosing a copy of a letter from me to Ms. Johnson's counsel. In the letter, I indicate that I am asking you to determine whether there are any live issues left to prevent Ms. Johnson's employment from being terminated. By this letter, I request that you take up the matter, to



**APPENDIX — 14-A**

conduct whatever hearing or hearings seem appropriate and to make the findings necessary to bring this matter to a conclusion.

Faithfully yours,

/s/ Larry

**J.L. EDMONDSON**  
Chief of the Eleventh

**Copy:**

Jeffrey O. Bramlett, Esq.  
Naomi Godfrey, Esq.  
Dawn M. Rivera, Esq.  
Ms. Evelyn Johnson

**Enclosure:**

Letter from Ms. Rivera of 11/19/03

**APPENDIX — 14-A**

**UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT  
Staff Attorneys' Office  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303-2289**

November 19, 2003

Ms. Evelyn Johnson  
6241 S. Skyline Drive  
Douglasville, Georgia 30135

Dear Ms. Johnson:

I have received a letter from Chief Judge Edmondson dated November 13, 2003 (enclosure), approving the termination of your employment with this office. As you know, you have been on leave without pay since July 2, 2003.

By this letter, I report that necessary administrative actions have been completed to close out your employment effective Friday, November 14, 2003. Your separation package is enclosed, along with copies of the appropriate documents including a record of leave statement. Please sign the enclosed separation check list and return in the self-addressed, stamped envelope.

At your convenience, but by the close of business on Tuesday, December 2, 2003, I ask that you contact Karen Sinyard, Administrative Manager, (at 404/335-6437) and make arrangements to remove any personal items from your former desk and office and to return to her any government keys, or other government property. Ms. Sinyard will be available to facilitate this final out processing.

At that time, please also return the Gateway 233 computer, serial#7841570, Gateway 15" color monitor, serial

## APPENDIX — 14-A

#8718694, Hewlett Packard Laser Jet 3P printer, serial #3103JG2UAD, and the keyboard and mouse that you were issued for home use.

We wish you the very best in your future endeavors.

Sincerely,

/s/ Naomi G. Godfrey

Naomi G. Godfrey

Senior Staff Attorney

c: The Honorable J.L. Edmondson, w/o enclosures  
Mr. Jeff Bramlett, w/o enclosures  
Mr. Ronan Doherty, w/o enclosures  
Ms. Dawn Rivera, w/o enclosures  
Mr. Norman Zoller, w/o enclosures  
Ms. Cheryl Vessels, w/o enclosures

Enclosures

# APPENDIX — 14-A

## RECORD OF LEAVE DATA (SF-1150)

1. Name (Last, First, Middle)

Johnson, Evelyn L.

2. Social Security Number

231-11-0983

3. N/A

4. Date and Nature of Separation

— 356-E Termination/Involuntary,  
November 14, 2003 -COB

5.A., B., C. — N/A

6. Total Service for Leave

More than 15 years

SCD 07/08/1982

## SUMMARY OF ANNUAL AND SICK LEAVE

7. Carryover Balance	MO	DAY	YEAR	HOURS	
				A	S
From Prior Leave	01	12	03	78	75
Year Ending	11	16	03		

## HOURS ANNUAL SICK RESTORED

8. CURRENT LEAVE YEAR ACCRUAL	176	88	0
9. TOTAL	254	163	
10. REDUCTION	72	36	0

## APPENDIX — 14-A

11. TOTAL LEAVE  
TAKEN                      97                      76      0
12. BALANCE                      85                      51      0
13. TOTAL HOURS PAID IN LUMP SUM \*85
- 14.; 15.A, B.; C.; 16.; 17.A, B.; 18; 19; 20; 21; 22; 23—N/A
24. REMARKS.

Mrs. Johnson has been on continuous LWOP since July 2, 2003, and therefore did not accrue leave during leave periods 14 through 22. (See Petitioner's note below).

\* Please pay Mrs. Johnson for 85 hours of unused annual leave.

25. Certified Correct by: (Signature)  
/s/ Naomi G. Godfrey

26. Senior Staff Attorney, U.S. Court of Appeals, Eleventh Circuit, 56 Forsyth Street, N.W. Atlanta, Georgia 30303  
Tel: (404) 335-6411

27. Date 11/19/03

Standard Form 1150  
Civil Service Commission

[PETITIONER'S NOTE: The remarks on number 24 was incorrect because as the personnelist who used to do this work, Petitioner knows that an employee who was on leave-without-pay status earns annual and sick leave on prorated basis].

APPENDIX — 14-A

UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT  
Staff Attorneys' Office  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303-2289

November 19, 2003

Evelyn Johnson  
6241 S. Skyline Drive  
Douglasville, Georgia 30135

RE: Health Insurance Program

Dear Ms. Johnson:

Your coverage in the Federal Employees Health Benefits Program (FEHB) ended on the last day of the pay period in which you separated from Federal service (November 16, 2003). Your coverage is automatically temporarily extended for 31 days after that date (at no cost to you)—no action is required on your part.

You also have the right to continue temporarily your FEHB coverage for up to 18 months after your separation instead of converting to nongroup coverage at this time. You may select any plan in the FEHB program in which to continue your coverage if you are eligible to enroll in the plan. To continue your coverage, you must pay the full amount of the premium (both of the employee and government shares) plus a two percent administrative charge. If you choose to continue your coverage during the first 31 days, you have the free coverage described above. Your enrollment charges begin on the day after the 31-day period of free coverage ends. If you continue the coverage to the end of the 18-month period, you will have another 31-day temporary extension of coverage for conversion to a nongroup contract.

## APPENDIX — 14-A

A registration form and detailed information about your opportunity to continue coverage is enclosed. You may get additional information by calling Cheryl Vessels, Human Resources Manager, Eleventh Circuit Court of Appeals, 404-335-6212, or me at (404) 335-6311.

If you want to continue your coverage, your registration form must be received at the address shown below within 60 days after the date of your separation, or the date you receive this notice, whichever is later. Bring or mail your registration form to:

Jacqueline K. Williams \*  
Eleventh Circuit Court of Appeals  
Staff Attorneys' Office  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303-2289

**IMPORTANT! PLEASE DO NOT SUBMIT PAYMENT** with your registration form. You will be billed later.

Sincerely,

/s/ Jacqueline K. Williams  
Jacqueline K. Williams

Enclosures

**\* [PETITIONER'S NOTE:** The employee who signed this letter, other administrative matters related to personnel performed by the Petitioner, are presently performed by the undersigned, Jacqueline Williams, female, black. Sara Gilibert, female, white, whose job is the administrative work in recruiting of staff attorneys, performs the other part of the duties formerly performed by the Petitioner. Although Sara Gilibert has the title of manager for recruiting, she does not have the decision-making responsibility (as the Petitioner) in selecting the staff attorneys for the vacant staff attorney positions, since Naomi Godfrey retained the responsibility of



## APPENDIX — 14-A

having the final say who to hire. As alleged in the Petitioner's contentions, these adverse personnel actions toward the Petitioner show Naomi Godfrey's malicious and evil intention of retaliatorily terminating the Petitioner in order to replace her with a black and a white employees, to perform the duties Petitioner singlehandedly performed in 3 ½ years without added compensation, and firing the Petitioner without cause but for filing the EDR complaint of intentional discrimination and disparate treatment due to non promotion.]

APPENDIX — 14-A

UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT

---

Room 416, 56 Forsyth Street  
Atlanta, Georgia 30303

J.L. EDMONDSON  
CHIEF JUDGE

17 November 2003

Honorable Gerrilyn G. Brill  
United States Magistrate Judge  
United States District Court  
1690 Richard B. Russell Federal Building  
75 Spring Street, S.W.  
Atlanta, Georgia 30303-3361

Re: Evelyn Johnson Adverse Personnel Action  
Policy Heard 29 October 2003

Dear Judge Brill:

In connection with the request for adverse action hearing by an employee of this Court's Staff Attorneys' Office, enclosed is a copy of a letter to the Senior Staff Attorney, Naomi Godfrey, dated 13 November 2003, authorizing Ms. Godfrey to take the steps necessary and proper in accordance with Court policy to terminate Ms. Johnson's employment.

I appreciate your hearing this matter.

Faithfully yours,

/s/ Larry  
J.L. Edmondson  
Chief of the Eleventh

Copy to: Jeffrey O. Bramlett, Esq.      Evelyn Johnson  
Naomi Godfrey, Esq.                  Dawn M. Rivera, Esq.

**APPENDIX — 14-A**

**UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT**

---

Room 416, 56 Forsyth Street  
Atlanta, Georgia 30303

**J.L. EDMONDSON  
CHIEF JUDGE**

13, November 2003

Ms. Naomi G. Godfrey  
Senior Staff Attorney  
United States Court of Appeals  
Eleventh Judicial Circuit  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

Dear Mrs. Godfrey:

I have accepted Magistrate Judge Gerrilyn Brill's written decision of 6 November 2003, and the accompanying transcript denying Evelyn Johnson's request for relief under the Court's Adverse Personnel Action Policy and approving the termination of her employment.

In the light of this final decision and your earlier recommendation, you are hereby authorized to take those steps necessary and proper in accordance with existing Court policy to terminate Ms. Johnson's employment without delay. The decision by Judge Brill also takes into account the request for a second attempt by Ms. Johnson on 16 July 2003, to seek consideration or relief under the Court's Employment Dispute Resolution Plan. Please consult with the Court's Human Resources Manager, if necessary, concerning final employee termination arrangements and AO paperwork.

**APPENDIX — 14-A**

Faithfully yours,

/s/ Larry  
J.L. Edmondson  
Chief of the Eleventh

**/kda (PETITIONER'S NOTE: Typist of this letter (Kathryn L. Atkins), signed by Judge Edmondson, was the Circuit Executive, Norman Zoller's, secretary.).**

**c: Mr. Jeffrey O. Bramlett  
Mr. Ronan P. Doherty  
Ms. Dawn M. Rivera  
Ms. Cheryl Vessels  
Mr. Norman E. Zoller**

APPENDIX — 15-A

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
1690 U.S. Courthouse Building  
75 Spring Street, S.W.  
ATLANTA, GEORGIA 30303-3361

Gerrilyn G. Brill  
United States  
Magistrate Judge

TEL (404) 215-1365  
FAX (404) 215-1564

December 17, 2003

Hon. J. L. Edmondson, Chief Judge  
United States Court of Appeals  
for the Eleventh Circuit  
56 Forsyth Street  
Atlanta, Georgia 30303

Re: October 27, 2003 EDR Complaint of Evelyn L.  
Johnson

Dear Judge Edmondson:

Enclosed please find my decision in the above-referenced matter. I am also enclosing three documents that were submitted by the parties in connection with the EDR Proceeding. The transcript of the December 8, 2003 hearing has been ordered but has not yet been completed. I will forward a copy of the transcript to you as soon as it is ready.

Yours truly,

/s/ Gerrilyn G. Brill  
Gerrilyn G. Brill  
UNITED STATES  
MAGISTRATE JUDGE

## APPENDIX — 15-A

### ENCLOSURES

cc: Ms. Naomi Godfrey  
VIA FAX (w/o Encl.)  
Mr. Norman E. Zoeller  
VIA FAX (w/o Encl.)  
Ms. Dawn M. Rivera  
VIA FAX (w/o Encl.)  
Mr. Ronan P. Doherty  
VIA FAX (w/o Encl.)  
Mr. Jeffrey O. Bramlett  
VIA FAX (w/o Enc.)

APPENDIX — 15-A

UNITED STATES COURT OF APPEALS  
EMPLOYMENT DISPUTE RESOLUTION PLAN  
PROCEEDING

IN RE:           October 28, 2003 EDR Complaint of Evelyn  
                    Johnson

DECISION OF THE JUDICIAL OFFICER

This is a proceeding pursuant to the Eleventh Circuit Court of Appeals' Employment Dispute Resolution ("EDR") Plan. Evelyn Johnson ("Petitioner") filed an EDR complaint on October 27, 2003 contending that the Staff Attorney's Office for the Eleventh Circuit Court of Appeals ("SAO") wrongfully terminated her employment on the basis of her national origin (Filipino), "perceived disability," and in retaliation for her having filed a prior EDR Complaint. For the reasons discussed below, the Court finds that Petitioner's October 27, 2003 EDR Complaint is procedurally barred and, accordingly, should be **DISMISSED**. [Pet.'s Note: Petitioner filed the 2003 EDR complaint on July 16, 2003, NOT October 28, 2003. (See Appendix 16-A, Exhibit D1 Form)].



## APPENDIX — 15-A

### Procedural History

Petitioner began working for the SAO as an Administrative Assistant in January 1989. On June 20, 2003, SAO Senior Staff Attorney Naomi Godfrey wrote a letter to Petitioner informing her that she was being terminated.

On July 16, 2003, Petitioner through her counsel initiated the EDR process with respect to her termination by requesting a consultation with Robert Phelps, the Eleventh Circuits EDR Coordinator. See EDR Plan at Ch. VII, § 5(A). Mr. Phelps responded to Petitioner's request by letter dated July 22, 2003. The letter was sent to Petitioner's home address and was also copied to her attorney at that time, Mattie P. Johnson, in Washington, D.C.

In the letter, Mr. Phelps acknowledged receipt of Petitioner's request for consultation, and stated: "Before I am able to act further on this matter, I request that you consider and then, if you so decide, file with me a 'Waiver of Confidentiality' on the attached form." A copy of the form was attached to the letter. The letter concluded with the

## APPENDIX — 15-A

following statement: "Before I am able to assist you with the issue you raise . . . I will need to have a waiver from you. . . ." [Pet.'s Note: (See Phelps' letter to the Petitioner dated July 22, 2003, Appendix 3-B; see also Petitioner's Brief).].

Petitioner did not return the waiver of confidentiality form, and neither Petitioner nor her counsel contacted Mr. Phelps again prior to the expiration of the 30 day consultation period provided in Chapter VII, Section 5(D) of the EDR Plan. On August 18, 2003, Mr. Phelps sent a letter to Petitioner and to Dawn Rivera, Petitioner's new counsel, informing them that he was "closing (Petitioner's) file without action" because the 30-day consultation period had expired without any further contact from Petitioner. [Pet.'s Note: As specifically stated on the Petitioner's Exh. D1 Form Fax transmittal, all contacts should be directed to the counsel, but Phelps failed to notify Petitioner's counsel, whose practice is in Washington, D.C. (Id.; see also note on the Fax transmittal).].

On September 12, 2003, Petitioner's attorney sent a

## APPENDIX — 15-A

letter to Mr. Phelps enclosing a completed Request for Mediation form and asking Mr. Phelps to address Petitioner's EDR claims. Mr. Phelps replied that he was without authority to proceed further on the EDR claims because both the consultation and mediation periods had expired.

On October 27, 2003, Petitioner filed her EDR Complaint with the Chief Judge of the Eleventh Circuit pursuant to Chapter VII, Section 7 (A) of the EDR Plan. On December 1, 2003, Chief Judge J. L. Edmondson requested that the undersigned Magistrate Judge resolve any remaining issues that might be pending with respect to Petitioner's October 27, 2003 complaint. On December 8, 2003, both parties appeared before the undersigned to address the viability of Petitioner's October 27, 2003 EDR Complaint. The Court heard argument from counsel for both sides, and also heard the testimony of Mr. Phelps, who was called by the SAO to address whether Petitioner's EDR complaint was procedurally barred. [Pet.'s Note: Petitioner was never notified personally or through

## APPENDIX — 15-A

counsel to be present at the “conference” in order to challenge Mr. Phelps, EDR coordinator, (Respondents’ witness ) testimony.].

At the conclusion of the hearing, the Court asked counsel for both sides whether there was any additional evidence or argument they wished to present before the Court decided whether Petitioner’s EDR complaint was procedurally barred. Counsel for both sides responded that they believed the record was complete with respect to that issue.<sup>1</sup>

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<sup>1</sup> After the Court had drafted its opinion on the procedural bar question, but before the decision was issued, counsel for Petitioner submitted a document entitled “Complainant’s Objection to Hearing Held Without Notice.” In the document, Petitioner argues that her due process rights were violated because she did not receive prior notice of the December 8, 2003 hearing, either “personally or through her counsel. . . .” It is unclear why Petitioner’s counsel did not inform Petitioner of the hearing, given that (1) Ms. Rivera admits she was told about the hearing on December 4, 2003; and (2) The Preamble to the Eleventh Circuit EDR Plan provides that, it was the attorneys, not the Court, that suggested December 8, 2003 as a mutually acceptable date for the hearing. In any event, Petitioner does not state in the document how she was prejudiced by the alleged lack of notice, or what evidence she would present if the record were reopened. Petitioner’s counsel was present at the hearing, gave argument and actively cross-examined Mr. Phelps on Petitioner’s behalf, and specifically stated in response to the Court’s question that no additional evidence or testimony was needed before the Court decided the procedural bar issue. Given these facts, the Court rejects Petitioner’s due process argument.

[Pet.’s Note: It was very clear from the *Objection to Hearing Held Without Notice Motion* (Appendix 18-A) filed by

## APPENDIX — 15-A

### Discussion

[a]ny complaint filed after the effective date of this Plan [January 1, 1999] shall be processed under the provisions of this Plan regardless of whether the actions giving rise to such a complaint may have occurred before the effective date of this Plan.

EDR Plan, Ch. I, §; see also Ch. IX, § 3. The Preamble further provides that the EDR Plan is "intended to be the

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Petitioner's counsel on December 12, 2003, how the Respondents through SAO counsel and the designated judicial officer, Judge Brill, handled the December 8, 2003, EDR hearing. The opposing party deceived the Petitioner's counsel by asking her for a "telephone conference with Judge Brill regarding whether any issues remained unresolved in this matter." Counsel for Ms. Johnson advised SAO counsel that Ms. Johnson was unavailable since the Thanksgiving holiday and was assured that it would be unnecessary for Ms. Johnson to participate in the conference. . . . "On Friday, December 5, 2003, SAO counsel contacted counsel for Ms. Johnson to advise that Judge Brill wished to hold the conference in chambers, instead via telephone." Upon arrival of Petitioner's counsel in chambers, however, she "discovered that Judge Brill had convened a hearing, with a court reporter and a witness produced by SAO."

The court's rejection of Petitioner's due process argument was prejudicial due to the fact that the SAO's counsel tricked and deceived Petitioner's counsel, which led Petitioner Counsel to believe that the "telephone conference" was an informal phone discussion "whether any issues remained unresolved in this matter." Notwithstanding the hearing held on December 8, 2003, it was held in bad faith due to the element of deception to relieve the SAO of any legal responsibility and accountability due the Petitioner.

## APPENDIX — 15-A

exclusive remedy for employees with respect to the rights and protections afforded;" that is, with respect to claims of race, color, religion, disability, sex, national origin, and/or age discrimination in the workplace.<sup>2</sup> See EDR Plan, Ch. 1, § 1.

As noted above, the EDR Plan sets forth a specific process that must be followed by a claimant before she may request a court hearing on her discrimination claim. First, the claimant must make a written request for consultation with the Eleventh Circuit's EDR Ch. VI, § 5A ("An employee who believes that his or her rights under this plan have been violated must first request consultation with ... the Court's EDR Coordinator....") (Emphasis added); see also EDR Plan at Ch. VII, §§ (B) (3) and 5 (D) (establishing 30-day time period). [Pet.'s Note: Petitioner filed a written request for consultation on July 16, 2003, through the EDR coordinator, several days before the deadline,

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<sup>2</sup>This protection differentiates the EDR Plan from the Eleventh Circuit's Adverse Personnel Action Policy, which governs workplace grievances that are not alleged to have been motivated by a discriminatory or retaliatory intent.



## APPENDIX — 15-A

### Appendix 16-A.].

Second, the claimant may make a written request for mediation within 14 days after receiving notice that the consultation period has expired. See EDR Plan, Ch. VII. § 6 (A). Chapter VII, Section 6(A) of the EDR Plan makes it clear that a claimant's failure to meet this deadline will result in her claim being procedurally barred from further prosecution: "Failure to pursue mediation will preclude further processing of the employee's claim under any other provisions of [the EDR Plan." Id. (Emphasis added).

In the present case, it is undisputed that on August 18, 2003, Mr. Phelps gave Petitioner and her counsel written notice that the consultation had expired. See August 18, 2003, letter attached to Petitioner's Motion for EDR Hearing (stating that "[t]he thirty day time frame for consultation . . . has passed. . . .") Under Chapter VII, Section 6(A) of the EDR Plan, Petitioner's written request for mediation was due (assuming three days for mailing) no later than September 4, 2003. However, Petitioner did not submit a mediation request until September 12, 2003.



## APPENDIX — 15-A

Because Petitioner did not comply with the deadline for requesting mediation, and there is no evidence in the record that Petitioner requested an extension of the deadline before the mediation period expired, the Court finds that Petitioner's claim is procedurally barred pursuant to Chapter VII, Section 6(A) of the Eleventh Circuit's EDR Plan.

At the December 8, 2003 hearing, counsel for Petitioner argued that Mr. Phelps did not provide her with a copy of the EDR Plan until September 9, 2003, and did not provide her with a mediation form until a few days later. (See also Petitioner's Motion for EDR Hearing at p. 4). Thus, Ms. Rivera suggested that Petitioner was not in a position to comply with the EDR deadlines until after September 9, 2003. The Court is not persuaded by this argument. The record indicates that Petitioner was given a copy of the EDR Plan, including all relevant forms, when she began her employment with the SAO. Moreover, the record shows that Petitioner clearly understood the EDR Plan and process. Mr. Phelps testified that Petitioner had personally participated in both consultation and mediation with the SAO less than

## APPENDIX — 15-A

a year before, in connection with another EDR complaint that she had filed. Petitioner's counsel made timely requests for mediation and consultation in that EDR action, and the Court sees no reason why she could not have met the same deadlines in this case.

### Conclusion

For the reasons set forth above, the Court Concludes that Petitioner's July 16, 2003 complaint is procedurally barred and should be **DISMISSED**. The Court is not aware of any other live issues pending in this matter.

In chambers, Atlanta, Georgia this 17<sup>th</sup> day of December 2003.

/s/ Gerrilyn G. Brill  
GERRILYN G. BRILL  
UNITED STATES MAGISTRATE JUDGE  
(Designated Judicial Hearing Officer)

**APPENDIX — 15-A**

**UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT**

---

Room 416, 56 Forsyth Street  
Atlanta, Georgia 30303

**J. L. EDMONDSON**  
Chief Judge

17 November 2003

Honorable Gerrilyn G. Brill  
United States Magistrate Judge  
United States District Court  
1690 Richard B. Russell Federal Building  
75 Spring Street, S.W.  
Atlanta, Georgia 30303-3361

**Re: Evelyn Johnson Adverse Personnel Action  
Policy Heard 29 October 2003**

Dear Judge Brill:

In connection with the request for adverse action hearing by an employee of this Court's Staff Attorney's Office, enclosed is a copy of a letter to the Senior Staff Attorney, Naomi Godfrey, dated 13 November 2003, authorizing Ms. Godfrey to take the steps that are necessary and proper in accordance with the Court policy to terminate Ms. Johnson's employment.

I appreciate your hearing this matter.

Faithfully yours,

**APPENDIX — 15-A**

/s/ Larry  
J. L. Edmondson  
Chief of the Eleventh

**Copy:**

Mr. Jeffrey O. Bramlett, Esq.  
Ms. Naomi Godfrey, Esq.  
Ms. Evelyn Johnson  
Ms. Dawn M. Rivera, Esq.

**APPENDIX — 15-A**

**UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT**

---

**Room 416, 56 Forsyth Street  
Atlanta, Georgia 30303**

**J. L. EDMONDSON  
Chief Judge**

**13 November 2003**

**Ms. Naomi G. Godfrey  
Senior Staff Attorney  
United States Court of Appeals  
Eleventh Judicial Circuit  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303**

**Dear Ms. Godfrey:**

**I have accepted Magistrate Judge Gerrilyn Brill's written decision of 6 November 2003, and the accompanying transcript denying Evelyn Johnson's request for relief under the Court's Adverse Personnel Action Policy and approving the termination of her employment.**

**In the light of this final decision and your earlier recommendation, you are hereby authorized to take those steps necessary and proper in accordance with existing Court policy to terminate Ms. Johnson's employment without delay. The decision by Judge Brill also takes into account the request for a second attempt by Ms. Johnson on 16 July 2003, to seek consideration or relief under the Court's Employment Dispute Resolution Plan. Please consult with the Court's Human Resources Manager, if necessary,**

## APPENDIX — 15-A

concerning final employee termination arrangements and AO paperwork.

Faithfully yours,

/s/ Larry

J. L. Edmondson

Chief of the Eleventh

/kla

c: Mr. Jeffrey O. Bramlett  
Mr. Ronan P. Doherty  
Ms. Dawn M. Rivera  
Ms. Cheryl Vessels  
Mr. Norman E. Zoller

**APPENDIX — 15-A**

**UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT  
STAFF ATTORNEYS OFFICE**

November 19, 2003

Ms. Evelyn Johnson  
6241 South Skyline Drive  
Douglasville, Georgia 30135

Dear Ms. Johnson:

I have received a letter from Chief Judge Edmondson dated November 13, 2003 (enclosure), approving the termination of your employment with this office. As you know, you have been on leave without pay since July 2, 2003.

By this letter, I report that necessary administrative actions have been completed to close out your employment effective Friday, November 14, 2003. Your separation package is enclosed, along with copies of the appropriate documents including a record of leave statement. Please sign the enclosed separation check list and return in the self-addressed stamped envelope.

As per your convenience, but by the close of business on Tuesday, December 2, 2003, I ask you contact Karen Sinyard, Administrative Manager, (at 404/335-6437) and make arrangements to remove any personal items from your former desk and office and to return to her any government keys, or other government property. Ms. Sinyard will be available to facilitate this final out processing.

At that time, please also return the Gateway 233 computer, serial #7841570, Gateway 15" color monitor, serial



APPENDIX — 15-A

#8718694, Hewlett Packard Laser Jet 3P printer serial #3103JG2UAD, and the keyboard and mouse that you were issued for home use.

We wish the very best in your future endeavors.

Sincerely,

/s/ Naomi G. Godfrey  
Naomi G. Godfrey  
Senior Staff Attorney

c: The Honorable J. L. Edmondson,  
w/o enclosures  
Mr. Jeff Bramlett, w/o enclosures  
Mr. Ronan Doherty, w/o enclosures  
Ms. Dawn Rivera, w/o enclosures  
Mr. Norman Zoller, w/o enclosures  
Ms. Cheryl Vessels, w/o enclosures

Enclosures

# APPENDIX — 15-A

## RECORD OF LEAVE DATA Standard Form 1150

1. Name (Last, First, Middle)  
Johnson, Evelyn L.
2. Social Security Number  
231-11-0983
3. N/A
4. Date and Nature of Separation  
— 356-E — Termination/Involuntary  
November 14, 2003 —COB
- 5.A., B., C. — N/A
6. Total Service for Leave  
More than 15 years  
  
SCD 07/08/1982

### SUMMARY OF ANNUAL AND SICK LEAVE

7. Carryover MO	DAY	YEAR	HRS		
Balance			A	S	
Leave 01 12 03					From Prior
Year Ending	11 16	03	78	75	

	HOURS	
	ANNUAL	SICK
RESTORED		

8. CURRENT LEAVE			
YEAR ACCRUAL	176	88	0

# APPENDIX — 15-A

9. TOTAL	254	163	
10. REDUCTION	72	36	0
11. TOTAL LEAVE TAKEN	97	76	0
12. BALANCE	85	51	0

13. TOTAL HOURS PAID IN LUMP SUM \*85

14.; 15.A, B., C.; 16.; 17.A, B.; 18; 19; 20; 21; 22; 23—N/A

24. REMARKS.

Mrs. Johnson has been on continuous LWOP since July 2, 2003, and therefore did not accrue leave during leave periods 14 through 22. (See Petitioner's note below).

\* Please pay Mrs. Johnson for 85 hours of unused annual leave.

25. Certified Correct by: (Signature)  
/s/ Naomi G. Godfrey

26. Senior Staff Attorney, U.S. Court of Appeals, Eleventh Circuit, 56 Forayth Street, N.W. Atlanta, Georgia 30303  
Tel: (404) 335-6411

27. Date 11/19/03  
Standard Form 1150  
Civil Service Commission

(PETITIONER'S NOTE: The remarks on number 24 was incorrect because as the personnelist who used to do this work, Petitioner knows that an employee who was on leave-without-pay status earns annual and sick leave on prorated basis.).

**COMPLAINT AND CONSULTATION  
(CONFIDENTIAL)**

TO: EDR/Alternate EDR Coordinator  
Robert Phelps  
Name

FROM: Evelyn L. Johnson  
[Complainant]

- I. A. Address: 6241 S. Skyline Drive  
Douglasville, GA 30135
- B. Work Phone: N/A Home Phone: 770-489-0343
- C. If you are now a court employee, state job title and pay classification of your job:

HR Coordinator, CPS CL 26/42, prior to receiving the involuntary termination letter dated June 20, 2003; although letter dated July 10, 2003, addressed to me stated extending my employment with the SAO through the conclusion of the adverse action (retaliation), referenced letter did not specifically state rescinding the employment termination.

- II. A. For a complaint alleging discrimination, check and identify as many categories are applicable:

☒ Race ☒ Color ☒ National Origin  
☒ Age ☒ Religion ☒ Gender  
☒ Handicap

B(1). Date(s) of alleged discrimination:

June 20, 2003, involuntary termination letter, construed as a continuing retaliatory action, as a result of

## APPENDIX — 16-A

participating in a federally protected activity; i.e., March 12, 2002, filing of EDR complaint under Title VII. The retaliatory actions consisted of: (1) June 20, 2003, involuntary termination of tenured federal employment; (2) March 12, 2003, referral to EAP memo from Sara Gilibert; (3) March '7, 10, 6-7 & February 24-25, 2003, e-mails notifying Norman Zoller of being singled-out by computer monitoring to intimidate, harass, and demoralize me daily; (4) February 5, 2003, two adverse memos from Sara Gilibert; (7) September 2, and August 29, 2002, leave charged (sick) and approved under FMLA for two other employees whose family members underwent serious medical issues, but I was charged annual leave, discretionary decision and retaliatory; (8) May 6, 2002, adverse e-mail; (9) March 28-April 2, 2002, singled-out to document hourly and daily work performed while other support staff not asked to do the same; March 22-25, 2001, e-mails, first instance or retaliatory action occurred ten days after engaging in federally protected activity, i.e., filing of the EDR complaint.

B(2). Please identify by name and position the official(s) you believe discriminated against you:

Naomi G. Godfrey, Senior Staff Attorney; Karen Sinyard, Admin Manager; Sara Gilibert, SAO Manager for Recruiting; Norman Zoller, Circuit Executive; Mori Irvine, Judicial Division Manager; Brian Schumacher, Supervising Staff Attorney.

III. A. For all types of matters complained of (including complaints of discrimination), please briefly summarize the events or occurrences giving rise to your complaint, and how you believe you were improperly treated or treated differently from other employees or applicants. You should also specify here the portion (section) of the Employment Dispute Resolution Plan which specifies the right(s) you believe may have been violated:

**CHAPTER VII. Dispute Resolution Procedures, Section 10, Eleventh Circuit Court of Appeals Employment Dispute Resolution Plan, Section 2.1. Prohibition against retaliation.** "The Court, any court unit executive, or their assistants, shall not retaliate against, coerce or interfere with a complainant or anyone participating in the filing and processing of a complaint."

June 20, 2003—last adverse event or adverse (retaliatory) employment action. Reprisal/involuntary termination and continuing retaliatory actions as a result of the original Title VII complaint of intentional discrimination and disparate treatment filed under court EDR Plan. Less than sixty (60) days of entry of final judgment of the original complaint, I was handed an involuntary termination letter terminating my 14 ½ years of federal employment with the SAO and vested federal government employment for more than 21 years. The adverse employment action was in retaliation to the cause of action I chose in exercising my federal employment rights of participating in a federally protected activity by filing an EDR complaint due to non promotion, alteration of office policies and personnel pattern of practice, and other federal employment violations.

The adverse continuing retaliatory actions included: (1) involuntarily terminating my tenured federal employment without cause; (2) relinquishing of my duties and responsibilities beginning January 22, 2002 without cause; (3) pressuring to return to work while under undue work-related stress, including FMLA violations and leave usage; (4) accounting and timekeeping of daily logs of work performed; (5) singled-out by computer monitoring impeding my work; (6) harassment through computer, and hostile work environment by intimidation. The adverse actions caused catastrophic tangible and intangible damages, irreparable injury, jeopardized my entitlement to full benefits of Federal Employees Retirement System (FERS), and affected compensation, terms, conditions, or privileges of my employment.

APPENDIX — 16-A

[you may attach up to one additional page  
as to this item, if necessary]

B. Corrective action sought by you:

Subject to appropriation, back pay and front pay, and  
associated benefits pursuant to 5 United States Code section  
5596. 5 U.S.C. § 5596.

C. Do you have an attorney or other person to  
represent you? ☒ Yes ☐ No

If yes, name and address of attorney or  
representative:

Mattie P. Johnson, Esq.  
Woodward Building 733 15<sup>th</sup> Street, NW, Suite 700  
Washington, D.C. 20005

/s/ Evelyn L. Johnson  
Signature

16 July 2003  
Date



**APPENDIX — 16-A**

**FAX TRANSMITTAL**

**TO:** Robert Phelps  
EDR Coordinator

**VIA:** Court HR Facsimile  
404-335-6132 and U.S. Mail

**FROM:** Evalyn L. Johnson

**DATE:** July 16, 2003

**SUBJECT:** Exhibit D1, Form 1 [1/99]  
EDR complaint form

**NO. OF PAGES INCLUDING THIS PAGE:** 3

**Please refer all inquiries to the retained  
counsel.**

**APPENDIX — 16-A**

**CLEAR TECH DEVELOPMENT FAX:+7704890343**

**\*\* TRANSMIT CONF REPORT \*\***

**Jul 17 '03 23:52**

**CLEAR TECH DEVELOPMENT ----> 4043356132**

<b>No.</b>	<b>002</b>
<b>Mode</b>	<b>Fine</b>
<b>Pages</b>	<b>3 Page(s)</b>
<b>Result</b>	<b>O K</b>

## APPENDIX — 17-A

### MERIT SYSTEMS PROTECTION BOARD APPEAL FORMS PACKAGE (MSPB Form 185)

#### Attachments Checklist

The forms in the MSPB Appeal Forms Package (MSBP Form 185) ask you to submit certain attachments with your appeal, depending on your answers to specific questions in the forms. This Attachments Checklist is intended to assist you in ensuring that all required attachments are submitted with your appeal. **Please submit only the attachments requested at this time.** You will be afforded the opportunity to submit detailed evidence in support of your appeal later in the proceeding.

#### MSBP Form 185-1 APPELLANT AND AGENCY INFORMATION

- ☐ Question 4-IF you answered "Yes," attach a completed Designation of Representative Form, MSBP Form 185-9.

#### MSBP Form 185-2 APPEAL OF AGENCY PERSONNEL ACTION OR DECISION (Non-retirement)

- ☐ Question 1-IF an SF-50 is available for the personnel action or decision, attach it. DO NOT delay filing your appeal if the SF-50 is not available; you may submit it later.
- ☐ Question 2-IF you received a proposal letter for the personnel action or decision, attach it.
- ☐ Question 3-IF you received a final decision letter for the personnel action or decision, attach it.
- ☐ Question 5-IF you answered "Yes," attach a copy of the agreement between you and the agency to try to resolve the matter through an alternative dispute resolution (ADR) process.

## APPENDIX — 17-A

- ☐ Question 8-IF you answered "Yes," attach a copy of the grievance.
- ☐ Question 10-IF you answered "Yes," attach a copy of the decision on the grievance.

### **MSPB Form 185-3 APPEAL OF OPM OR AGENCY RETIREMENT DECISION OR ACTION**

- ☐ Question 6-IF you answered "Yes," attach a copy of the OPM final or reconsideration decision.
- ☐ Question 7-IF you answered "Yes," attach a copy of the agency decision.

### **MSPB Form 185-4A CLAIMS OF MISTAKES IN PROCEDURES OR VIOLATIONS OF LAW**

No attachments required.

### **MSPB Form 185-4B CLAIMS OF PROHIBITED DISCRIMINATION**

- ☐ Question 2-IF you answered "Yes," attach a copy of the formal discrimination complaint filed with the agency.
- ☐ Question 5-IF you answered "Yes," attach a copy of the decision on the discrimination complaint.

### **MSPB Form 185-4C CLAIMS OF PROHIBITED PERSONNEL PRACTICES**

No attachments required.

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## **MERIT SYSTEMS PROTECTION BOARD APPEAL FORMS PACKAGE (MSPB Form 185)**

### **Attachments Checklist**

### **MSPB Form 185-5 WHISTLEBLOWER CLAIMS OR**

## APPENDIX — 17-A

### **INDIVIDUAL RIGHT OF ACTION (IRA) APPEAL**

- ☐ Question 1-IF you made a protected disclosure in writing, attach a copy of it.
- ☐ Questions 1 through 4-IF you filed a complaint with the Office of Special Counsel (OSC) before filing your appeal, you may attach a copy of Part 2 of Form OSC-11(8/00) to provide the information requested in these questions.
- ☐ Question 4-FOR IRA APPEAL ONLY-IF you received a proposal letter, decision letter, and/or SF-50 for the agency action or decision on which your whistleblower claim is based, attach it/them.
- ☐ Question 6-IF you filed a complaint with the Office of Special Counsel (OSC) before filing your appeal, attach a copy of your request to OSC for corrective action. IF you are attaching a copy of Part 2 of Forms OSC-11 (8/00), that attachment provides the information requested in this question.
- ☐ Question 8-IF you answered "Yes," attach a copy of the OSC notice informing you of your right to appeal to the MSPB.
- ☐ Question 11-IF you previously filed a stay request with the MSPB, attach a copy of it.
- ☐ Question 13-IF you answered "Yes," attach a copy of the decision on the stay request.

### **MSPB Form 185-6 WHISTLEBLOWER STAY REQUEST**

- ☐ Attach a Certificate of Service specifying how and when your stay request was served on the agency. Attach any documentary evidence that supports your stay request.

## APPENDIX — 17-A

### **MSPB Form 185-7 USERRA CLAIMS OR USERRA APPEAL**

- ☐ Question 4-FOR USERRA APPEAL ONLY-IF you received a proposal letter, decision letter, and/or SF-50 for any agency action or decision associated with your claim of a USERRA violation, attach it/them.
- ☐ Question 6-IF you filed a USERRA complaint with the Secretary of Labor, attach a copy of it.
- ☐ Question 7-IF you answered "Yes," attach a copy of the notice you received from the Secretary of Labor.
- ☐ Question 9-IF you answered "Yes," attach EITHER a completed MSPB Form 185-9 if OSC is representing you OR a copy of the OSC letter declining to represent you, whichever applies.

### **MSPB Form 185-8 VETERANS PREFERENCE CLAIMS OR VEOA APPEAL**

- ☐ Question 5-FOR VEOA APPEAL ONLY-IF you received a proposal letter, decision letter, and/or SF-50 for any agency action or decision associated with your claim of a veterans' preference violation, attach it/them.
  - ☐ Question 7-FOR VEOA APPEAL ONLY-Attach a copy of the VEOA complaint filed with the Secretary of Labor.
  - ☐ Question 8-FOR VEOA APPEAL ONLY-Attach EITHER a copy of the notice you received from the Secretary of Labor that your VEOA complaint could not be resolved OR a copy of your notice to the Secretary stating your intent to appeal to the Board, whichever applies.
-

**APPENDIX — 17-A**

**MERIT SYSTEMS PROTECTION BOARD FORM  
185-1**

**APPEAL FORM - APPELLANT AND AGENCY  
INFORMATION**

---

1. Name (last, first, middle initial  
**Johnson, Evelyn L.**

---

2. Present address (number and street, city, State, and Zip  
Code

**You must notify the Board in writing of any change in  
your mailing address while your appeal is pending.**

Address: **6241 South Skyline Drive**

Address:

City, State, Zip Code: **Douglasville, Georgia 30135**

---

3. Telephone Numbers (include area code) and E-Mail  
Address

**You must notify the Board in writing of any change in  
your telephone number(s) or e-mail address while  
your appeal is pending.**

Home: **(770) 489-0343**

Work: **(404) 335-6411**

FAX: **(770) 489-0343**

Other: **(404)402-3578 (Cell)**

E-mail Address: **<Lady1Bug@aol.com>**

---

4. Do you wish to designate an individual or organization  
to represent you in this proceeding before the Board? (You  
may designate a representative at any time. However, the  
processing of your appeal will not normally be delayed  
because of any difficulty you may have in obtaining a  
representative.)



## APPENDIX — 17-A

☐ Yes (Complete and attach MSPB Form 185-9, Designation of Representative Form)

☐ No

5. Name and address of the agency that took the action you are appealing (include bureau or division, street address, city, State and Zip code)

Agency Name: United States Court of Appeals for the Eleventh Circuit  
Bureau: Staff Attorney's Office  
Address: 56 Forsyth Street, N.W.  
City, State, Atlanta, Georgia  
Zip Code: 30303-2289

6. Your employment status at the time of the action being appealed:

☒ Permanent ☐ Temporary ☐ Term  
☐ Seasonal ☐ Applicant ☐ Retired

7. Type of appointment (if applicable)

☐ Competitive ☐ Excepted ☒ SES  
☐ Postal Service ☐ Other

8. Your position, title, grade, and duty station at the time of the action being appealed (if applicable):

Position:

Title: **Human Resources Coordinator**

Grade: **CPS CL 26/42**

Duty Station: **Atlanta, Georgia**

9. Are you entitled to veterans' preference?

**See 5 U.S.C. 2108**

☐ Yes ☒ No

10. Length of Government service (if applicable):

**21 years and 2 months**

**APPENDIX — 17-A**

11. Length of service with acting agency (if applicable): **14 years and 9 months**

12. Were you serving a probationary or trial period at the time of the action being appealed?

☐ Yes    ☒ No

---

**MERIT SYSTEMS PROTECTION BOARD FORM  
185-1**

**APPEAL FORM - APPELLANT AND AGENCY  
INFORMATION**

**HEARING:** If the Board determines that it has jurisdiction over the matter, you are appealing, you may have a right to a hearing before an administrative judge. If you choose to have a hearing, the Board will notify you when and where it is to be held. If you do not want a hearing, the Board will make its decision on the basis of the submissions of the parties.

13. Do you want a hearing?

☐ Yes    ☒ NO

14. I certify that all of the statements made in this form and all attached forms are true, complete, and correct to the best of my knowledge and belief.

**Appellant's signature:**

/s/ Evelyn Johnson

**Date:**                      **September 6, 2003**

Please check the appropriate box below for EACH FORM that you have attached to this form to complete your appeal.

## APPENDIX — 17-A

Please staple all attached forms to this form in the upper left hand corner.

- ☐ **MSPB Form 185-2, Appeal of Agency Personnel Action or Decision (non-retirement)**
- ☐ **MSPB Form 185-3, Appeal of OPM or Agency Retirement Decision or Action**
- ☐ **MSPB Form 185-4A, Claims of Mistakes in Procedures Or Violations of Law**
- ☐ **MSPB Form 185-4B, Claims of Prohibited Personnel Practices**
- ☐ **MSPB Form 185-4C, Claims of Prohibited Personnel Practices**
- ☐ **MSPB Form 185-5, Whistleblower Claims or Individual Right of Action (IRA) Appeal**
- ☐ **MSPB Form 185-6, Whistleblower Stay Request**
- ☐ **MSPB Form 185-7, USERRA Claims or USERRA Appeal**
- ☐ **MSPB Form 185-8, Veterans' Preference Claims or VEOA Appeal**
- ☐ **MSPB Form 185-9, Designation of Representative Form**

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**MERIT SYSTEMS PROTECTION BOARD FORM  
185-2**

**APPEAL OF AGENCY PERSONNEL ACTION OR  
DECISION (Non-retirement)**

## APPENDIX — 17-A

Complete this form and attach it to MSPB Form 185-1 if you are appealing an agency personnel action or decision (other than a decision or action affecting your retirement rights or benefits) that is appealable to the Board under a law, rule, or regulation. See 5 CFR 1201.3(a) for a list of appealable personnel actions and decisions. If the personnel action or decision is appealable to the Board, you should have received a final decision letter from the agency that informs you of your right to file an appeal with the Board.

**Please submit only the attachments requested in this form at this time.** You will be afforded the opportunity to submit detailed evidence in support of your appeal later in the proceeding.

Name (Last, first, middle initial)

**Johnson, Evelyn L.**

1. Check the box that best describes the **personnel action or decision** taken by the agency you named in MSPB Form 185-1 that you wish to appeal. (If you are appealing more than one action or decision, check each box that applies.) Attach a copy of the proposal letter and decision letter (if any). If an SF-50 or its equivalent was issued and is available, attach it now; however, **DO NOT** delay filing your appeal because you do not have an SF-50. You may submit the SF-50 when it becomes available.

- ☒ Removal (Retaliatory)
- ☐ Reduction in grade or pay
- ☐ Suspension for more than 14 days
- ☐ Separation or demotion by reduction in force (RIF)
- ☐ Furlough of 30 days or less
- ☐ Termination during probationary period
- ☐ Denial of within-grade increase
- ☐ Failure to restore/re-employ/reinstate or improper restoration/re-employment /reinstatement

## APPENDIX — 17-A

- ☐ Negative suitability determination
- ☒ Other action, describe: **Continuing retaliatory actions, hostile work environment, and reprisal due to the filing of the EDR/EEO complaint of intentional discrimination and disparate treatment due to non promotion under Title VII, prohibited actions based on race, national origin, age, sex, color, and religion.**

---

2. Date you received the agency's proposal letter (if any) (month, day, year) (Attach a copy):

**June 20, 2003. (Tab F)**

---

3. Date you received the agency's final decision letter (if any) (Month, day, year) Attach a copy:

**June 20, 2003 (Tab F)**

---

4. Effective date (if any) of the agency action or decision (month, day, year):

---

5. Prior to filing this appeal, did you and the agency mutually agree in writing to try to resolve the matter through an alternative dispute resolution (ADR) process?

☐ Yes (Attach a copy of the agreement) ☒ No

---

6. Explain briefly why you think the agency was wrong in taking this action.

**Agency's action was retaliatory/reprisal as a result of my filing the EDR/EEO complaint on March 12, 2002. Complaint allegations were continuing intentional discrimination and disparate treatment on non promotion, filed under Title VII due to prohibited discriminatory actions based on race, national origin, sex, age, color, and religion, and other federally protected rights.**

## APPENDIX — 17-A

7. What action would you like the Board to take in this case (i.e., what remedy are you asking for)?

**Independent agency full investigation of all allegations related to the entire complaint and consolidate original/initial complaint filed on March 12, 2002, including all retaliatory actions of harassment and hostile work environment, through the most recent adverse employment action of termination. Remedy all damages incurred, (as asked on the attachment), as provided by law.**

☐ **With respect to the agency personnel action or decision you are appealing, have you, or has anyone on your behalf, filed a grievance under a negotiated grievance procedure provided by a collective bargaining agreement?**

☐ **Yes (Attach a copy)**

☒ **No**

---

9. If your answer to question 8 is "Yes," on what date was the grievance filed (month, day, year)?

**Appeal on adverse action of termination pending, hearing scheduled on September 25, 2003. Continuing retaliatory actions, hostile work environment, and reprisal pending. Initial EDR complaint filed on March 12, 2002, final decision entered on April 24, 2003.**

**Enter the place where the grievance was filed if different from your answer to question 5 on MSPB Form 185-1:**

**Agency Name:**

**Bureau:**

**Address:**

**Address:**

**City, State, Zip Code:**

---

10. If your answer to question 8 was "Yes," has a decision on the grievance been issued?



## APPENDIX — 17-A

☐ Yes (Attach a copy)

☐ No

If "Yes," on what date was the decision issued (month, day, year)? **April 24, 2003**

---

### **MERIT SYSTEMS PROTECTION BOARD FORM 185-3 APPEAL OF OPM OR AGENCY RETIREMENT DECISION OR ACTION**

Complete this form and attach it to MSPB Form 185-1 if you are appealing an administrative decision or action by the office of Personnel Management (OP) or a Federal agency affecting your rights or benefits under the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System. See 5 CFR 1201.3(a)(6). If the decision or action is appealable to the Board, you should have received a final decision from OPM or agency that informs you of your right to file an appeal with the Board.

---

**Name** (Last, first, middle initial)

**Johnson, Evelyn L.**

---

**1. In which retirement system are you enrolled?**

☐ CSRS

☐ CSRS offset

☐ FERS✓

☐ Other, describe:

**(FERCCA - OPM's final**

**determination still pending)**

---

**2. Are you a:**

☐ Current Employee

☐ Annuitant

☐ Surviving Spouse

☒ Other, describe:

**Involuntarily/retaliatorily Terminated on June 20, 2003 (see attached letter and note to file), then placed on Leave-without-pay status effective July 2, 2003. (Tabs D, E, and F)**

---

**3. If retired, date of retirement (month, day, year):** **No**



## APPENDIX — 17-A

4. Are you appealing an action or decision concerning a retirement coverage error under the provisions of the Federal Erroneous Retirement Coverage Corrections Act (FERCCA)?

Possibly, depending on the OPM's determination

☐ Yes      ☐ No

You may raise certain other claims in connection with an appeal of an agency personnel action or decision. Such claims must be raised no later than the close of the pre-hearing conference on your appeal. See 5 CFR 1201.24(b). If you wish to raise any of these claims at this time, complete and attach the appropriate form as described below. Please review the instructions for these forms - and the laws and regulations cited below - carefully. Remember that you are responsible for proving each claim you raise.

**MSPB Form 185-4A** - For claims that the agency made mistakes in applying required procedures (harmful error) or that the agency violated a law in taking the action or making the decision. See 5 CFR 1201.56(b)(3), and (c)(3). **DO NOT** use this form for claims of a violation of law for which another form is provided; instead, use the appropriate form described below.

**MSPB Form 185-4B** - For claims that the agency action or decision was the result of prohibited discrimination (race, color, religion, sex, national origin, disability, age). See 5 CFR 1201.151 and 1201.153.

**MSPB Form 185-4C** - For claims that the agency action or decision was the result of a prohibited personnel practice. See 5 U.S.C. 2302(b) and 5 CFR 1201.56(b)(2). **DO NOT** use this form for whistleblower or veteran's preference claims; instead, use the appropriate form described below.

## APPENDIX — 17-A

**MSPB Form 185-5** - For claims that the agency action or decision was based on whistleblowing. See 5 U.S.C. 2302(B)(8), 5 CFR 1209.2(b)(2), and 5 CFR 1209.6(a). (You may also request that the Board stay the action or decision by completing and attaching **MSPB Form 185-6**. See 5 CFR 1209.8 and 1209.9.)

**MSPB Form 185-7** - For claims that the agency violated your rights under USERRA (other than rights related to the Thrift Savings Plan for Federal employees) in taking the action or making the decision. See 38 U.S.C. 4324, 5 CFR 1208.11, and 5 CFR 1208.13.

**MSPB Form 185-8** - For claims that the agency violated a law or regulation relating to veterans' preference in taking the action or making the decision. **IMPORTANT:** If you choose to make your veterans' preference claim in connection with this appeal of an agency action or decision, you may NOT also file a VEOA complaint with the Secretary of Labor. See 5 U.S.C. 3330a(e) and 5 CFR 1208.26.

5. Describe the retirement decision or action you are appealing.

**Involuntary separation due to involuntary relinquishing of duties and responsibilities without cause, termination of 21 years of federal government employment affecting full employment benefits upon retirement. Would like to take Involuntary Separation under OPM's Discontinued Service Retirement (DSR). Retirement coverage under Federal Employees Retirement System (FERS) with 21+ years of federal service, 52 year old, and involuntary separation/retirement would be contingent upon promotion to a higher grade due to past intentional non-promotion and other unlawful personnel adverse actions.**

---

Answer either Question 6 or Question 7, whichever applies

## APPENDIX — 17-A

to your appeal. **Please submit only the attachment requested in Question 6 or Question 7 at this time.** You will be afforded the opportunity to submit detailed evidence in support of your appeal later in the proceeding

---

6. If you are appealing an OPM retirement decision, have you received a final or reconsideration decision from OPM?

☐ Yes (Attach a copy)

☐ No

If "Yes," on what date did you receive the OPM final or reconsideration decision (month, day, year)?

---

7. If you are appealing a retirement decision or action by a Federal agency other than OPM, have you received a final decision from that agency?

☒ Yes (Attach a copy)

☐ No

If "Yes," on what date did you receive the agency decision (month, day, year)?

**April 29, 2003 - (Tabs F, G)**

---

8. Why do you think the decision of action was wrong?

**Agency decision was not based on merits, appearance of bias, and overwhelming conflict of interest. Harmful error in application of law.**

---

9. What action would like the Board to take in this case (i.e., what remedy are you asking for)?

**Independent agency full investigation of all allegations related to the entire complaint and consolidate original/initial complaint filed on March 12, 2002, including all retaliatory actions of harassment and hostile work environment, through the most recent adverse employment action of termination, dated June 20, 2003, still pending for a**

## APPENDIX — 17-A

hearing with a magistrate court judge, scheduled on September 25, 2003. Remedy all damages incurred (as asked on the attachment), as provided by law. (Tab C)

You may raise certain other claims in connection with an appeal of a retirement decision or action. Such claims must be raised no later than the close of the pre-hearing conference on your appeal. See 5 CFR 1201.24(b). If you wish to raise any of these claims at this time, complete and attach the appropriate form as described below. Please review the instructions for these forms - and the laws and regulations cited below - carefully. Remember that you are responsible for proving each claim you raise.

**MSPB Form 185-4A** - For claims that the agency made mistakes in applying required procedures (harmful error) or that the agency violated a law in taking the action or making the decision. See 5 CFR 1201.56(b)(1), (b)(3), and (c)(3). **DO NOT** use this form for claims of a violation of law for which another form is provided; instead, use the appropriate form described below.

**NOTE:** The kinds of claims that may be raised in the following forms are **RARELY** applicable to retirement appeals.

**MSPB Form 185-4B** - For claims that the agency action or decision was the result of prohibited discrimination (race, color, religion, sex, national origin, disability, age). See 5 CFR 1201.151 and 1201.153.

**MSPB Form 185-4C** - For claims that the agency action or decision was the result of a prohibited personnel practice. See 5 U.S.C. 2302(b) and 5 CFR 1201.56(b)(2). **DO NOT** use this form for whistleblower or veteran's preference claims; instead, use the appropriate form described below.

**MSPB Form 185-5** - For claims that the agency action or decision was based on whistleblowing. See 5 U.S.C.

## APPENDIX — 17-A

**2302(b)(8), 5 CFR 1209.2(b)(2), and 5 CFR 1209.6(a).**  
(You may also request that the Board stay the action or decision by completing and attaching **MSPB Form 185-6.**  
**See 5 CFR 1209.8 and 1209.9.)**

**MSPB Form 185-7** - For claims that the agency violated your rights under USERRA (other than rights related to the Thrift Savings Plan for Federal employees) in taking the action or making the decision. **See 38 U.S.C. 4324, 5 CFR 1208.11, and 5 CFR 1208.13.**

**MSPB Form 185-8** - For claims that the agency violated a law or regulation relating to veterans' preference in taking the action or making the decision. **IMPORTANT:** If you choose to make your veterans' preference claim in connection with this appeal of an agency action or decision, you may NOT also file a VEOA complaint with the Secretary of Labor. **See 5 U.S.C. 3330a(e) and 5 CFR 1208.26.**

---

### MERIT SYSTEMS PROTECTION BOARD FORM 185-4A

#### CLAIMS OF MISTAKES IN PROCEDURES OR VIOLATIONS OF LAW

Complete this form and attach it to MSPB Form 185-1 if you are raising a claim - in connection with an appeal of an agency action or decision for which you have completed MSPB Form 185-2 or MSPB 185-3 - that the agency made mistakes in applying required procedures (harmful error) or that the agency violated a law in taking the action or making the decision that you are appealing.

DO NOT use this form for claims of a violation of law for which another form is provided; instead, use the appropriate form for that claim (i.e., MSPB Form 185-4B for



## APPENDIX — 17-A

a discrimination claim, MSPB Form 185-4C for prohibited personnel practices claims, MSPB Form 185-5 for a whistleblower claim, MSPB Form 185-7 for a USERRA claim, or MSPB Form 185-8 for a veterans' preference claim).

---

**Name** (last, first, middle initial)

**Johnson, Evelyn L.**

---

**Mistakes in Procedures (Harmful Error)**- Harmful error is defined in the Board's regulations as: "Error by the agency in the application of its procedures that is likely to have caused the agency to reach a conclusion different from the one it would have reached in the absence of the error." See 5 CFR 1201.56 (c)(3).

1. If you believe that the agency made a mistake (or mistakes) in applying required procedures in connection with the action or decision you described in MSPB Form 185-2 or MSPB Form 185-3, identify the procedure(s) and describe the mistake(s).

Employer dismissed the entire complaint without considering the merits and many factual issues and disputes regarding personnel actions; discounted substantial material evidence presented at the hearing; respondent offered no affirmative defense; appearance of bias; and overwhelming conflict of interest. Alleged unlawful personnel violations include (for specific allegations, please see the attachment):

a. Unit official's abuse of authority through manipulation of personnel actions and promoting favored employees on many instances;

b. Promotions of favored employees and disparate treatment not in accordance with the regulations under the Judiciary Regulations on Personnel Administration;

## APPENDIX — 17-A

**c. Disparate treatment in application of leave usage and violation of FMLA rights;**

**d. Involuntary discharge without cause;**

**e. Retaliation and wrongful termination due to the filing of Title VII complaint.**

---

**2. Explain how you were harmed by the mistake(s) in procedure(s) described in your answer to question 1.**

**a. Irreparable injury. Injury due to a continuing and intentional discrimination; retaliation and harassment, creating a hostile work environment; continuing harassment and retaliatory actions;**

**b. Economic injury. Violation of Equal Pay Act of the Fair Labor Standards, 29 U.S.C. § 216. Recovery of back pay wages due to willful intentional discrimination;**

**c. Involuntary separation. Termination of 21+ years of federal government employment and long-term economic effect on full retirement and annuity upon retirement; no position available (former position was given to two other employees, one employee hired at four grades higher than petitioner, one employee was promoted to equate one grade lower than the petitioner), antagonistic and hostile working environment, and employer historically resisted the anti discrimination statute;**

**d. Mental anguish and emotional abuse and suffering. Manifested in emotional stress, depression, digestive problems, narcolepsy (sleep disorder), high blood pressure, deep grief, distress, and anxiety;**

**e. Drug dependency. Long-term effect of taking stimulant to control narcolepsy. Drugs stimulate the**



## **APPENDIX — 17-A**

**central nervous system and are used medicinally to combat depression and narcolepsy. Prolonged uses are followed by fatigue and depression;**

**f. Double [treble] damages. Intended in certain instances, as a kind of punishment for improper behavior;**

**g. Exemplary [punitive] damages. Punishment to the wrongdoer and excess enhancement to the injured due to intentional, malicious, and willful misconduct.**

---

**Violations of Law - An appealable action will be reversed as being "not in accordance with law" if the agency's action is unlawful in its entirety, i.e., if there is no legal authority for the action.**

**3. If you believe that the agency violated a law in connection with the action or decision you described in MSPB Form 185-2 or MSPB 185-3, identify the law.**

**a. Civil Rights Act of 1991, codified at 42 U.S.C. § 1981a(b)**

**b. Civil Rights Act of 1964; 42 U.S.C. § 2000e-5(K); 5 U.S.C. § 5596**

**c. Equal Pay Act of the Fair Labor Standards Act, 29 U.S.C. § 216; 5 CFR 550-804(a); 550 - 805**

**d. Competitive Service and competition status. 5 CFR 212-101(a)(2). "All positions in the legislative and judicial branches of the federal government and in the District of Columbia specifically made subject to the civil service laws by statute." 5 U.S.C. § 2102**

**e. Individual right of action in certain reprisal cases. 5 U.S.C. § 1221**

## **APPENDIX — 17-A**

**f. Federal employee benefits affecting the Federal Employees' Retirement System (FERS) and component Social Security Benefits. 5 CFR 1201.3(a)(6); 5 U.S.C. § 84**

**g. Federal employee benefits affecting the Thrift Savings Plan (TSP). 5 CFR 1609.1(b)(1)(I); 1613.202-03; 1613.261**

---

**4. Describe how the law you identified in your answer to question 3 was violated.**

**a. Employer intentionally engaged in unlawful harassment and intentional discrimination;**

**b. Employer intentionally engaged in unlawful employment practice;**

**c. Employer abuse of authority affecting terms, conditions, and privileges of employment;**

**d. Employer engaged in wide range of unlawful personnel actions;**

**e. Employer engaged in continuing intentional discriminatory actions and disparate treatment for many years;**

**f. Employer engaged in continuing retaliatory actions creating harassment, intimidation, offensive, and hostile work environment while employee engaged in federally protected activity;**

**g. Employer engaged in the computer monitoring while singling-out the employee, and violated Fourth Amendment, which protects "people" rather than "places;" "protection of general rights to privacy - right to be let alone by other people, and wherever an individual may harbor a reasonable 'expectation of privacy,' entitled to be free from**

## APPENDIX — 17-A

unreasonable government intrusion.”

h. Involuntary discharge with cause;

i. Retaliation and wrongful termination of more than 21 years of federal government service due to the filing of Title VII complaint.

.....

### MERIT SYSTEMS PROTECTION BOARD FORM 185-4B

#### CLAIMS OF PROHIBITED DISCRIMINATION

Complete this form and attach it to MSPB Form 185-1 if you are raising a claim - in connection with an appeal of an agency action or decision for which you have completed MSPB Form 185-2 or MSPB Form 185-3 - that the agency action or decision was the result of prohibited discrimination.

If you have previously filed a discrimination complaint with the agency under the procedures of the Equal Employment Opportunity Commission (29 CFR Part 1614), you may file an appeal with the Board with the Board after you have received the agency's final decision on your complaint or, if the agency has not issued a final decision on your discrimination complaint within 120 calendar days after the date you filed it, at any time after the end of the 120-day period. See 5CFR1201.154.

Name (last, first, middle initial)

Johnson, Evelyn L.

**Discrimination** - An allegation of discrimination is not an independent source of Board jurisdiction. See 5 CFR 1201.151.

1. Check the appropriate box (or boxes below to indicate the basis (or bases) of your claim that you were discriminated

## APPENDIX — 17-A

against by the agency in connection with the action or decision you described in MSPB Form 185-2 or MSPB Form 185-3:

- ☒ Race      ☒ Color      ☐ Religion  
☒ Sex      ☒ National origin  
☐ Disability      ☒ Age

---

2. Have you filed a formal discrimination complaint with your agency concerning the action you are appealing?

- ☐ Yes (Attach a copy)      ☐ No

(Tabs G through S)

---

3. If your answer to question 2 is "Yes," enter the place where the complaint was filed **if different from your answer to question 5 on MSPB Form 185-1:**

Agency Name:

Bureaus:

Address:

Address:

City, State, Zip code:

---

4. Date filed (month, day, year): March 12, 2002

---

5. Has a decision been Issued?

- ☐ Yes (Attach a copy)      ☐ No

---

6. Are you requesting an award of compensatory damages in connection with your discrimination claim? **See 5 CFR 1201.202(c).**

- ☐ Yes ☒      ☐ No

If "Yes," in what amount? \$

**Subject to appropriation, back pay, front pay, attorneys' fees, ad associated benefits pursuant to 5 U.S.C. § 5596; full relief under Title VII in accordance with the standards prescribed under § 706(k) of the Civil Rights Act of 1964 (42 U.S.C. § 200e-5(k)); 5 U.S.C. § 841.507. (Tab C)**

## **APPENDIX — 17-A**

7. If your answer to question 6 is "Yes," explain why you feel that you are entitled to an award of compensatory damages under the applicable statutory standard. See 42 U.S.C. 1981a and 5CFR 1201.202©).

a. Employer intentionally engaged in unlawful harassment and intentional discrimination and disparate treatment, violating anti discrimination law under Title VII;

b. Employer intentionally engaged in an unlawful employment practice and abuse of authority, affecting terms, conditions, and privileges of employment;

c. Employer engaged in wide range of unlawful personnel actions.

d. Employer engaged in continuing intentional discriminatory actions and disparate treatment for many years.

e. Employer engaged in continuing retaliatory actions creating harassment, intimidation, offensive, and hostile work environment while employee engaged in federally protected activity;

f. Employer engaged in the computer monitoring while singling-out the employee, and violated Fourth Amendment which protects 'people' rather than 'places;' protection of general rights to privacy - right to be let alone by other people, and wherever an individual may harbor a reasonable 'expectation of privacy,' entitled to be free from unreasonable government intrusion."

g. Involuntary discharge without cause;

h. Retaliation and wrongful termination or

APPENDIX — 17-A

more than 21 years of federal government service due to the filing of Title VII complaint.

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**MERIT SYSTEMS PROTECTION BOARD FORM  
185-4C**

**CLAIMS OF PROHIBITED PERSONNEL  
PRACTICES**

Complete this form and attach it to MSPB Form 185-1 if you are raising a claim - in connection with an appeal of an agency action or decision for which you have completed MSPB 185-2 or MSPB 185-3 - that the agency action or decision was the result of one or more of the statutory prohibited personnel practices. See 5 U.S.C. 2302(b).

**DO NOT** use this form for any of the following prohibited personnel practice claims:

- A claim that the action or decision was the result of discrimination based on race, color, religion, sex, national origin, disability, or age, 5 U.S.C. 2302(b)(1); complete MSPB Form 185-4B instead.
- A claim that the action or decision was based on whistleblowing, 5 U.S.C. 2302(b)(8); complete MSPB 185-5 instead.
- A claim that the action or decision violated a veterans' preference requirement, 5 U.S.C. 2302(B)(11); complete MSPB Form 185-8 instead.

---

Name (Last, first, middle initial)  
**Johnson, Evelyn L.**

---

**Prohibited Personnel Practices** - The statutory prohibited personnel practices are set forth at 5 U.S.C.



## APPENDIX — 17-A

**2302(b)(1)-(b)(12).** An allegation of a prohibited personnel practice is not an independent source of Board jurisdiction. The underlying action must first be within the Board's jurisdiction before an allegation of a prohibited personnel practice may be considered by the Board. See 5 CFR 1201.56(b)(2).

The Prohibited Personnel Practices statute, 5 U.S.C. 2302, does **not** apply to all personnel actions or to all Federal employees. Please review the definitions of "personnel action," "covered position," and "agency" at 5 U.S.C. 2302(a) to be sure that both you and the action or decision you are appealing are covered by those definitions before you complete and submit this form.

1. Check the appropriate box (or boxes) below to indicate the basis (or bases) of your claim that the agency committed a prohibited personnel practice **in connection with the action or decision you described in MSPB Form 185-2 or MSPB Form 185-3.**

☐ Discrimination based on marital status or political affiliation

☐ Soliciting or considering employment recommendations not based on the individual's work performance, ability, aptitude, general qualifications, suitability, character, or loyalty

☐ Coercing the political activity of any person

☐ Deceiving or willfully obstructing a person's right to compete for employment

☐ Influencing any person to withdraw from competition for any position, whether to help or hurt anyone else's employment prospects

☐ Giving unauthorized preferential treatment to any



## APPENDIX — 17-A

employee or applicant

☐ Nepotism

☐ Taking or failing to take a personnel action as a reprisal for the exercise of any appeal, complaint, or grievance right; for assisting anyone else in exercising such a right; for cooperating with or disclosing information to the Special Counsel of the Inspector General of an agency; or for refusing to obey an order that would require the individual to violate a law

☐ Discriminating on the basis of personal conduct which does not adversely affect the performance of the employee or applicant or the performance of others, except in case of criminal conviction for the conduct

☐ Taking or failing to take any other personnel action that would violate any law, rule, or regulation implementing or directly concerning the merit system principles

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### MERIT SYSTEMS PROTECTION BOARD FORM 185-5

#### WHISTLEBLOWER CLAIMS OR INDIVIDUAL RIGHT OF ACTION (IRA) APPEAL

Complete this form and attach it to MSPB Form in either of the following situations:

- You are raising a claim- in connection with an appeal of an agency action or decision for which you have completed MSPB Form 185-2 or MSPB Form 185-3 - that the agency action or decision was based on whistleblowing. See 5 U.S.C. 2302(b)(8) and 5 CFR 1209.2(b)(2).

## APPENDIX — 17-A

- You are filing an individual Right of Action (IRA) appeal authorized by the Whistleblower Protection Act (WPA) after first filing a complaint with the Office of Special Counsel (OSC) and exhausting the procedures of that office. See 5 U.S.C. 1214(a)(3), 1221, and 2302(b)(8), and 5 CFR 1209.2(b)(1).

Threatening, proposing, taking, or not taking a personnel action based on whistleblowing is one of the twelve statutory prohibited personnel practices set forth at 5 USC 2302(b). The Prohibited Personnel Practices statute 5 U.S.C. 2302, does **NOT** apply to all personnel actions or to all Federal employees. Please review the definitions of "personnel action," "covered position," and "agency" at 5 U.S.C. 2302(a) to be sure that both you and the action or decision that you claim was based on whistleblowing are covered by those definitions before you complete and submit this form.

If this is an IRA appeal, your appeal will consist **ONLY** of a completed MSPB Form 185-1 and MSPB Form 185-5. (You may also attach MSPB Form 185-6 if you are requesting a stay and/or MSPB Form 185-9 if you are designating a representative.) In an IRA appeal, the Board may consider **ONLY** the claim that the agency action or decision was based on whistleblowing. It may not consider the merits of the agency action or decision, nor may it consider any claims other than the claim that the action or decision was based on whistleblowing.

If you are requesting that the Board stay the personnel action or decision, also complete and attach MSPB Form 185-6. See CFR 1209.8 and 1209.9.

**Please submit only the attachments requested in this form at this time.** You will be afforded the opportunity to submit detailed evidence in support of your appeal later in proceeding.

## APPENDIX — 17-A

If you filed a complaint with the Office of Special Counsel (OSC) using Form OSC-11 (8/00) before filing this appeal, you may attach a copy of Part 2, Reprisal for Whistleblowing, of the OSC form together with any continuation sheet or supplement filed with OSC. This will give the Board the information requested in questions 1 through 4. Please complete the remainder of this form even if you attach Form OSC-11.

---

Name (Last, first, middle initial)

**Johnson, Evelyn L.**

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**THE WHISTLEBLOWING DISCLOSURE(S)** Answer questions 1 and 2 regardless of whether this is an IRA appeal or a claim that an appealable agency action or decision was based on whistleblowing. A whistleblowing disclosure is a disclosure of information that you reasonably believe evidences a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety. See 5 U.S.C. 230(b)(8).

1. For each disclosure you made, provide the date of the disclosure (month, day, year) and summarize the disclosure below (attach additional sheets if necessary) or, if the disclosure was made in writing, attach a copy.

**Please see attachment. (Tabs D, E, F, T, and U)**

---

2. Provide the name, title, and office address of the person to whom each disclosure described in you answer to question 1 was made. (Attach additional sheets if necessary.)

Name: **Norman E. Zoller**

Title: **Circuit Executive**

Office: **Office of the Circuit Executive**

**United States Court of Appeals for the  
Eleventh Circuit**

Address: **56 Forsyth Street, NW**

## APPENDIX — 17-A

City, State, Zip Code: Atlanta, Georgia 30303-2289

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### **THE AGENCY PERSONNEL ACTION OR DECISION -**

**Answer question 3 regardless of whether this is an IRA appeal or a claim that an appealable agency action or decision was based on whistleblowing. Answer questions 4 and 5 ONLY if this is an IRA appeal.**

3. Provide a chronology of facts concerning the agency action or decision that you claim was based on whistleblowing and explain why you believe that it was based on whistleblowing.

Substantial material evidence presented to the court at the evidentiary hearing were all dismissed, without considering the merits and many issues of factual disputes and questions of law. Information was disclosed to the Circuit Executive, the supervising official of the court-unit head and primary respondent before filing the EDR/EEO employment complaint. The Circuit Executive is the chief administrative official responsible for the administrative operations of the Eleventh Circuit US Court of Appeals. Appellant reasonably believes information disclosed evidences violation of law, violation judiciary personnel rules and regulations, and evidence showed clear and convincing abuse of authority.

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4. Identify the agency action or decision that you claim was based on whistleblowing (see 5 U.S.C. 2302(a) for covered personnel actions) and provide the date (month, day, year) of the action or decision. (Attach any proposal letter, decision letter, and/or SF-50 that you received in connection with this action or decision.)

Employer issued a termination letter dated June 20, 2003 but tried to retract the unlawful adverse action by issuing letters dated July 1 and 10, 2003, and placing appellant on Leave-Without-Pay status.

## APPENDIX — 17-A

Check the appropriate box below to indicate whether the action or decision was:

☐ Threatened

☐ Proposed

☐ Taken✓

☐ Not taken    Tabs D, E, and  
F)

5. What action would you like the Board to take in this case (i.e., what remedy are you asking for)?

**Independent agency full investigation of all allegations related to the entire complaint and consolidate original/initial complaint filed on March 12, 2002, including all retaliatory actions of harassment and hostile work environment, through the most recent adverse employment action of termination, dated June 20, 2003, still pending for a hearing with a magistrate court judge, scheduled on September 25, 2003. Remedy all damages incurred (as asked on the attachment), as provided by law. (Tab C)**

### **FILING WITH OFFICE OF SPECIAL COUNSEL (OSC)**

**- Answer questions 6 through 8 ONLY if you previously sought corrective action from the Office of Special Counsel (OSC) concerning the same disclosure(s) and the same agency personnel action or decision that you must describe in your answers to questions 1 through 4. If this is an IRA appeal, you MUST exhaust OSC procedures before you may file an appeal with the Board.**

6. Attach a copy of your request to the Office of Special Counsel for corrective action and provide the date (month, day, year) that you filed it.

7. Provide the location of the OSC office where you filed your request.

Office Name:

Address:



## APPENDIX — 17-A

Address:

City, State, Zip code:

---

8. Have you received written notice of your right to file this appeal from the Office of Special Counsel?

☐ Yes (Attach a copy)

☐ No

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**REQUEST FOR CONSEQUENTIAL DAMAGES -**  
**Answer questions 9 and 10.**

9. Are you requesting an award of consequential damages in connection with your whistleblower claim? See 5 CFR 1201.202(b).

☒ Yes✓

☐ No

If Yes, in what amount?

**Subject to appropriation, back pay, front pay, attorneys' fees, and associated benefits pursuant to 5 U.S.C. § 5596; FULL RELIEF UNDER Title VII in accordance with the standards prescribed under § 706(k) of the Civil Rights Act of 1964 (42 U.S.C. § 200E-5(K); 5 U.S.C. § 841.507. (Tab C)**

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10. If your answer to question 9 is "Yes," explain why you feel that you are entitled to an award of consequential damages under the applicable statutory standard. See 5 U.S.C. 1221(g)(1)(A)(ii) and 5 CFR 1201.202(b).

**a. Irreparable injury. Injury due to a continuing and intentional discrimination; retaliation and harassment, creating a hostile work environment; continuing harassment and retaliatory actions;**

**b. Economic injury. Violation of Equal Pay Act of the Fair Labor Standards, 19 U.S.C. § 216. Recovery of back pay wages due to willful intentional discrimination;**

## APPENDIX — 17-A

c. Involuntary separation. Termination of 21+ years of federal government employment and long-term economic effect on full retirement and annuity upon retirement; no position available (former position was given to two other employees, one employee hired at four grades higher than petitioner, one employee was promoted to equate one grade lower than the petitioner), antagonistic and hostile working environment, and employer historically resisted the anti discrimination statute;

d. Mental anguish and emotional abuse and suffering. Manifested in emotional stress, depression, digestive problems, narcolepsy (sleep disorder), high blood pressure, deep grief, distress, and anxiety;

e. Drug dependency. Long-term effect of taking stimulant to control narcolepsy. Drugs stimulate the central nervous system and are used medicinally to combat depression and narcolepsy. Prolonged uses are followed by fatigue and depression;

f. Double [trebel] damages. Intended in certain instances, as a kind of punishment for improper behavior;

g. Exemplary [punitive] damages. Punishment to the wrongdoer and excess enhancement to the injured due to intentional, malicious, and willful misconduct.

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**STAY REQUEST** - If you are requesting that the Board STAY the agency action or decision that is the subject of your whistleblower appeal, complete and attach MSPB Form 185-6. If you have ALREADY requested a stay from the Board in connection with this agency action or decision, answer questions 11 through 13.

11. Attach a copy of your stay request and provide the date



APPENDIX — 17-A

(month, day, year) that you filed it.

12. Provide the location of the MSPB office where you filed your request.

Office Name:

Address:

Address:

City, State, Zip code:

13. Has there been a decision on your stay request?

☐ yes (attach a copy)

☐ No

DESIGNATION: The individual or organization named below is hereby designated to represent:

**NAME AND ADDRESS OF APPELLANT:**

**Evelyn L. Johnson  
6241 S. Skyline Drive  
Douglasville, GA 30135**

"I hereby designate **The Law Office of Melville Johnson, P.C.** to serve as my representative during the course of this appeal. I understand that my representative is authorized to act on my behalf. In addition, I specifically delegate to my representative the authority to settle this appeal on my behalf. I understand that any limitation on this settlement authority must be filed in writing with the Board.

Representative's address (number and street, city, state and Zip code).

**Dawn M. Rivera, Esq.  
Melville Johnson, P.C.  
44 Broad Street, NW  
Atlanta, Georgia 30303**

Representative's telephone numbers (include area code) and e-mail address:

**APPENDIX — 17-A**

Office: (404) 524-9111

FAX: (404) 524-6611

Other:

E-mail address: <[drivera@melvillejohnson.com](mailto:drivera@melvillejohnson.com)>

Appellant's Signature:

/s/ Evelyn Johnson

Representative's Signature:

Date: September 6, 2003

APPENDIX — 18-A

MELVILLE JOHNSON, P.C.  
44 Broad Street, N.W.  
Suite 222, The Grant Building  
Telephone (404) 524-9111  
Fax (404) 524-6611  
email [info@melvillejohnson.com](mailto:info@melvillejohnson.com)  
[www.melvillejohnson.com](http://www.melvillejohnson.com)

December 12, 2003

**VIA FIRST CLASS MAIL**

Ms. Gerrilyn G. Brill  
U.S. Magistrate Judge  
United States District Court  
Northern District of Georgia  
1690 U.S. Courthouse Building  
75 Spring Street, S.W.  
Atlanta, Georgia 30303-3361

Re: Evelyn Johnson v. Staff Attorneys' Office, U.S. Court  
of Appeals for the Eleventh Circuit

Dear Judge Brill:

Enclosed please find *Complainant's Objection to  
Hearing Held Without Notice*. Thank you very much for your  
attention to this matter. If you have any questions, please do  
not hesitate to call.

Very truly yours,  
MELVILLE JOHNSON, P.C.  
/s/ Dawn M. Rivera  
Dawn M. Rivera  
Attorney at Law

DMR:me  
Enclosure

## APPENDIX — 18-A

IN THE UNITED STATES COURT OF APPEALS FOR  
THE ELEVENTH CIRCUIT

EVELYN JOHNSON, )  
 )  
 Complainant, )  
 )  
 )  
 v. )  
 )EMPLOYMENT DISPUTE  
 )RESOLUTION HEARING  
 )  
 STAFF ATTORNEYS' )  
 OFFICE, U.S. COURT )  
 OF APPEALS FOR )  
 THE ELEVENTH CIRCUIT )  
 )  
 Respondent Agency. )  
 )

### OBJECTION TO HEARING

**HELD WITHOUT NOTICE**

COMES NOW Complainant, Evelyn L. Johnson, by and through counsel, Melville Johnson, P.C., and hereby objects to the hearing held without proper notice on Monday, December 8, 2003.

On Thursday, December 4, 2003, counsel for Ms. Johnson received a telephone call from the opposing counsel, stating that Judge Brill wished to hold a telephone

## APPENDIX — 18-A

conference regarding whether any issues remained unresolved in this matter. Counsel for Ms. Johnson advised SAO counsel that Ms. Johnson had been unavailable since the Thanksgiving holiday and was assured that it would be unnecessary for Ms. Johnson to participate in the conference. **[Pet.'s Note: SAO's counsel and Respondent made the decision that it would be unnecessary for Petitioner to participate at the supposedly "telephone conference."].**

On that basis, counsel for Ms. Johnson agreed to a telephone conference with opposing counsel and with Judge Brill, to be held on December 8, 2003. On Friday, December 5, 2003, SAO counsel contacted counsel for Ms. Johnson to advise that Judge Brill wished to hold the "conference" in chambers, instead of via telephone. Counsel for Ms. Johnson agreed to proceed on that basis. However, upon arriving in chambers, counsel for Ms. Johnson discovered that Judge Brill had convened a hearing, with a court reporter and a witness produced by SAO.

Pursuant to the Due Process Clause of the United

APPENDIX — 18-A

States Constitution, Ms. Johnson has the right to receive proper notice of any hearing held regarding her prohibited personnel action claims. Such notice was not provided to Ms. Johnson personally or through her counsel prior to the hearing held on December 8, 2003.

MELVILLE JOHNSON, P.C.

/s/ Dawn M. Rivera  
Dawn M. Rivera  
Georgia Bar No. 002535

44 Broad Street, N.W.  
Suite 222, The Grant Building  
Atlanta, Georgia 30303  
404-524-9111 - voice  
404-524-6611 - facsimile

## APPENDIX — 19-A

UNITED STATES OF AMERICA

**MERIT SYSTEMS PROTECTION BOARD**

EVELYN L. JOHNSON, )  
 )  
 Appellant, )  
 ) DOCKET  
 ) NUMBER  
 v. ) AT-0752-03-0934-I-1  
 )  
 )  
 ADMINISTRATIVE OFFICE) )  
 OF THE U. S. COURTS, )  
 Agency. )

**To: Merit Systems Protection Board**

## RESPONSE TO PETITION FOR REVIEW

The Administrative Office of the United States Courts (agency) respectfully urges the Merit Systems Protection Board to deny the petition for review filed by Evelyn L. Johnson.<sup>1</sup> The petition for review challenges an initial

<sup>1</sup> The initial decision in this case specified the Administrative Office as the respondent. Appellant is, however, an employee of the United States Court of Appeals for the Eleventh Circuit, appointed by the senior staff attorney under 28 U.S.C. § 715(b). The Administrative Office is a separate agency within the judicial branch, created under 28 U.S.C. § 601, whose employees are appointed by the director of the Administrative Office under 28 U.S.C. § 602. As set forth in 28 U.S.C. § 604, the Administrative Office performs administrative duties with respect to the courts. 28 U.S.C. § 609 provides that the authority of the courts to appoint their own clerical or administrative personnel shall not be limited by the statutory provisions concerning the Administrative Office.

**[Pet.'s Note: The AO is not a separate agency within the judicial branch. AO is the only administrative agency within the**



## APPENDIX — 19-A

decision issued by the administrative judge on October 9, 2003, dismissing appellant's appeal because it was withdrawn by the appellant. Appellant's petition does not establish either that new and material evidence is available that, despite due diligence, was not available to her at the time she withdrew her appeal; or that the decision of the administrative judge is based on an erroneous interpretation of statute or regulation. 5 C.F.R. § 1201.115(d). The additional material submitted by Ms. Johnson, dated November 22, 2003 does not alter these conclusions, or otherwise show that the Board has jurisdiction over her appeal.

As shown by Attachment A, appellant was originally appointed to an excepted position as a court secretary with the staff attorney in the United States Court of Appeals for the Eleventh Circuit, effective January 17, 1989. Attachment B reflects that she was promoted to the position of human resources coordinator effective September 10, 2001. Appellant was appointed under 28 U.S.C. § 715(b) which provides that a senior staff attorney, who is appointed by the chief judge of the court of appeals under section 715(a), may appoint necessary staff attorneys and employees with the approval of the chief judge. Although the initial decision states that appellant was removed from her position effective June 27, 2003, her removal did not in fact occur until November 14, 2003, after the filing of her petition for review.

Appellant first contends that the dismissal of her appeal should be reversed and her appeal reopened. Respondent believes that the appeal was properly dismissed and that it should not be reopened. In the initial decision

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judicial system, adopted by the Judicial Conference of the U.S. under the Congressional Act of 1995. *AOUSC CH 1, 1. Preamble, 2. Scope of Coverage, & 3. Definitions A-D. (See Appendix F, Tabs 2-6, 8); 2 U.S.C. § 1434.*

## APPENDIX — 19-A

dismissing the appeal, the administrative judge cited Luellen v. U.S. Postal Service, 88 M.S.P.R. 11 (2001), which held that a request for reconsideration of an appellant-initiated dismissal of an appeal should generally be treated as a late-filed petition for appeal, or as a request to reopen and reinstate a prior appeal.

With respect to the first criterion, Luellen, held that good cause must be shown for the untimely filing of an appeal, and that pursuit of a remedy in another forum does not constitute good cause. Appellant is apparently arguing that the court should not have dismissed a complaint that she filed under the court's internal employment dispute resolution plan. Under Luellen, appellant's pursuit of an employment dispute resolution complaint with the court, or the dismissal of that complaint, is not grounds for late filing of her appeal. Moreover, although circumstances have changed since the filing of her petition for review, in that she has been removed from her position, as set forth below the Board lacks jurisdiction to consider an appeal of that removal.

With respect to the second criterion, Luellen held that an appellant's withdrawal of an appeal is an act of finality that has the effect of removing the appeal from the Board's jurisdiction, and that absent unusual circumstances, such as misinformation or new and material evidence, the Board will not reopen or reinstate an appeal merely because the appellant now wishes to proceed before the Board. The only allegation of new information raised by the appellant is that the agency (presumably the court or the staff attorney's office) informed her of "employment rights" after dismissal of her complaint. It is not clear what the appellant means here, i.e., whether she is referring to some aspect of her employment dispute resolution complaint, or whether she is arguing that she found out new information regarding her right to file an appeal, either within the court or with the Board. In either event, she does not indicate what new information is. Although she does raise several arguments

## APPENDIX — 19-A

concerning Board jurisdiction, none of those arguments provides a basis for considering her appeal.

The Board's jurisdiction to review personnel actions by government agencies is not plenary but is instead limited to areas specifically authorized by statute or regulation. See Collaso v. M.S.P.B., 775 F.2d 296, 297 (Fed. Cir. 1985); 5 U.S.C. § 7701(a). Section 7701(a) provides that employees may appeal to the Board only those actions that are made appealable "under any law, rule, or regulation." However, there is no law, rule, or regulation authorizing appellant to appeal to the Board.

Appellant contends that the Board has jurisdiction to review a removal for unacceptable performance of a non-preference eligible employee in the excepted service with two or more years of current continuous service. 5 U.S.C. § 4303(a) authorizes removal of an employee for unacceptable performance. Section 4303(e) provides that any "employee" who is a preference eligible, in the competitive service, or in the excepted service and covered by chapter II of 5 U.S.C. chapter 75, and who is removed under section 4303, is entitled to appeal the removal to the Board. Appellant does not fall under this provision, first, because she was not removed under section 4303. Section 4303 provides that "an agency" may remove an employee for unacceptable performance. 5 U.S.C. § 4301 defines "agency" for this purpose to include executive agencies and the Government Printing Office. Since appellant was an employee of the judicial rather than the executive branch, she does not fall under this provision.

She also was not an "employee" within the meaning of section 4303(e). The term "employee" is defined by section 4301 to include "an individual employed in or under an agency;" as indicated above, appellant was not an employee of an "agency." In addition, she was not a preference eligible, and was in the excepted rather than the competitive service.<sup>2</sup>

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<sup>2</sup> The competitive service is defined to include "all civil service positions in the executive branch," with certain exceptions, and "civil service positions not in the executive branch which are specifically

## APPENDIX — 19-A

Finally, she was not an excepted service employee covered by 5 U.S.C. chapter 75, subch. II. Section 751(a)(1) defines "employee" for purposes of that subchapter to include (A) an individual in the competitive service; (B) a preference eligible in the excepted service or in the United States Postal Service or Postal Rate Commission; and (c) an individual in the excepted service who either is awaiting conversion to the competitive service and is not serving a probationary period, or has completed two years of current continuous service in an executive agency. Appellant did not fall within any of these categories. She was a non-preference eligible in the excepted service but was not serving in an agency with competitive service positions or in an executive agency. She therefore was not an employee within the meaning of section 7511(a)(1) and the Board lacks jurisdiction to hear her appeal. Hartman v. M.S.P.B., 77f.3d 1378 (Fed. Cir. 1996). See also Williams v. McClellan, 569 F.2d 1031, 1033 (8<sup>th</sup> Cir. 1978) (judicial branch positions similar to the one occupied by appellant are outside of the competitive service and are not covered by any merit or civil service system. [Pet.'s Note: The instant case before the Court is distinguishable from the cases cited supra.]

Appellant further cites 5 U.S.C. §§ 1221(a) and 2103(b) as a basis for Board jurisdiction. Section 1221(a) provides for an individual right of action for an "employee, former employee, or applicant for employment . . . with respect to any personnel action taken . . . as a result of a prohibited personnel practice described in section 2302 (b)(8)." 5 U.S.C. § 2302(b)(8) prohibits an employee from taking a "personnel action" against an employee or applicant

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included in the competitive service by statute." 5 U.S.C. §2102. Since appellant was employed in the judicial branch, and since nothing in 28 U.S.C. § 715(b) or in any other provision of the United States Code includes staff attorney employees in a court of appeals in the competitive service, they are in the excepted service. [Pet.'s Note: Most staff attorneys are appointed as term or temporary employees. Unlike administrative support staff and deputy clerks, who are permanent employees, court chambers' clerks and assistants, and staff attorneys are all appointed under different statutes; therefore, appointees' positions could not be defined under a singular statute.]

## APPENDIX — 19-A

who makes certain whistleblowing disclosures. "Personnel action" is defined by section 2302(a)(2) as specified actions taken with respect to an "employee in, or applicant for, a covered position in an agency." The term "agency," in turn, is defined to include executive but not judicial branch agencies. 5 U.S.C. §2302(a)(2)(C). Thus, appellant has no individual right of action under 5 U.S.C. § 1221(a). See Hartman v. M.S.P.B., 77f3.D 1378 (Fed Cir 1996). Moreover, 5 U.S.C. § 2103(b) is merely the definition of the excepted service and does not provide any appeal rights.

Appellant further cites provisions of 5 U.S.C. chapters 83 and 84, and accompanying provisions of the Code of Federal Regulations, as providing a basis for her to appeal to the Board. The provisions cited refer only to appeals regarding administrative actions or orders affecting the retirement rights or interests of an individual; no such administrative action or order has been cited by appellant.

Finally, appellant contends that the Board has jurisdiction over her appeal based on her complaint of discrimination. Her November 22, 2003, letter makes additional arguments regarding discrimination, based on the employment dispute resolution complaint that she filed with the court. There is no statute or regulation providing for Board jurisdiction over a complaint of discrimination by a court employee. 5 U.S.C. § 7702(a) provides for Board jurisdiction where an employee (A) has been affected by an action that the employee may appeal to the Board, and (B) alleges that a basis for the action was discrimination prohibited by certain statutes, including section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16). Since there is no basis for Board jurisdiction here, appellant has not been affected by an action that she may appeal to the Board. Moreover, section 2000e-16 provides that all personnel actions affecting employees in "those units of the legislative and judicial branches of the Federal Government having positions in the competitive service" shall be made free from discrimination. Since all staff attorney employees are appointed under 28 U.S.C. § 715(b) and are in the excepted service, appellant was not employed in a unit of the judicial branch having positions in the competitive service, and



## APPENDIX — 19-A

section 2000e-16 therefore is inapplicable.

**[Pet.'s Note: Respondent's analysis here is incorrect. (See Appendix F for other civil service rules under the Code of Federal Regulations. Furthermore, Petitioner alleged intentional discrimination and disparate treatment due to several instances of non promotion, filed under Title VII of the Civil Rights Act of 1964 on the basis of national origin, color, sex, race, and age at the very outset of the filing of the complaint.).]**

In conclusion, appellant does not cite any new evidence that would indicate that her appeal should be reopened, nor does she establish any error of law in the initial decision or cite any other legal rationale that might provide a basis for the Board to exercise jurisdiction. Accordingly, the petition for review should be denied.

Respectfully submitted,

/s/ Susan T. Kattan

Susan T. Kattan

Assistant General Counsel

Administrative Office of the

United States Courts

One Columbus Circle, N.E.

Washington, D.C. 20544

(202) 502-1100

Date: December 4, 2003

**APPENDIX — 20-A**

**MELVILLE JOHNSON, P. C.**

44 Broad Street, N.W.

Suite 222, The Grant Building

Atlanta, Georgia 30303

Telephone (404) 524-9111

FAX (404) 524-6611

email [info@melvillejohnson.com](mailto:info@melvillejohnson.com)

[www.melvillejohnson.com](http://www.melvillejohnson.com)

October 8, 2003

**VIA FACSIMILE & FIRST CLASS MAIL**

Merit Systems Protection Board

Atlanta Regional Office

401 West Peachtree Street, N.W.

Suite 1050

Atlanta, Georgia 30308

Facsimile: 404-730-2767

Re: Evelyn Johnson v. Staff Attorneys' Office, U. S.  
Court of Appeals for the Eleventh Circuit

Dear Sir/Madam:

Enclosed please find a "Notice of Withdrawal of Appeal," pursuant to Ms. Evelyn Johnson's previously filed Merit Systems Protection Board appeal. A copy of this notice has been sent to the other party.

Thank you for your cooperation in this matter. Please do not hesitate to contact me if you have any questions.

Very truly yours,

**MELVILLE JOHNSON, P.C.**

/s/ Dawn M. Rivera, Esq.

Attorney at Law

DMR:me

Enclosure

cc: Ms. Evelyn Johnson



APPENDIX — 20-A

MERIT SYSTEMS PROTECTION BOARD

ATLANTA REGIONAL OFFICE

EVELYN JOHNSON	)	
Appellant,	)	
	)	
v.	)	
	)	DOCKET NUMBER
STAFF ATTORNEYS	)	AT-0752-03-0934-I-1
OFFICE U.S. COURT	)	
OF APPEALS FOR THE	)	<u>October 8, 2003</u>
ELEVENTH CIRCUIT,	)	DATE
Agency.	)	
	)	

NOTICE OF WITHDRAWAL OF APPEAL

COMES NOW Appellant, Evelyn L. Johnson, by and through counsel, Melville Johnson, P.C., and hereby withdraws her Appeal against the Staff Attorneys' Office, U. S. Court of Appeals for the Eleventh Circuit.

Respectfully submitted this 8<sup>th</sup> day of October 2003.

MELVILLE JOHNSON, P.C.

/s/ Dawn M. Rivera  
Dawn M. Rivera  
Georgia Bar No. 002535

44 Broad Street, N.W.  
Suite 222, The Grant Building  
Atlanta, Georgia 30303  
404.524.9111 - voice  
404.524.6611 - facsimile

APPENDIX — 20-A

MELVILLE JOHNSON, P. C.  
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November 18, 2003

Ms, Evelyn Johnson  
6241 S. Skyline Drive  
Douglasville, GA 30135

Re: Evelyn Johnson v. Administrative Office of the U.S.  
Courts

Dear Ms. Johnson:

We received a copy of a letter sent to you by the Merit Systems Protection Board regarding your letter to MSPB Judge Cummings requesting that he re-open your appeal. MSPB has apparently construed your request as a petition for review.

As you may recall, you agreed last month to withdraw your MSPB appeal after this firm advised that no basis exists for MSPB to exercise jurisdiction over your appeal. MSPB and federal courts have held that federal court employees are employed by their local courts, not by the Administrative Office of the Courts. As a result, you were not an "employee" as that term is defined under MSPB jurisdictional guidelines, despite your participation in federal retirement programs. Pursuant to those precedents, we filed a Notice of Withdrawal of Appeal on your behalf on October 8, 2003.

APPENDIX — 20-A

As we previously stated, we will not be responding on your behalf to communications from MSPB. It is our recommendation that you once again withdraw your MSPB petition. Instead, we will continue pursuing the administrative process of the Eleventh Circuit, including a final decision on your EDR complaint. **[Pet.'s Note: Although Petitioner did not agree over the phone with the retained counsel to withdraw Petitioner's petition with the MSPB, Ms. Rivera and her firm decided for the Petitioner without her express permission. This is evidenced by Petitioner's continued pursuit to adjudicate her case through the MSPB.]**

Thank you for your cooperation in this matter. Please do not hesitate to contact me if you have any questions.

Very truly yours,

MELVILLE JOHNSON, P.C.

/s/ Dawn M. Rivera

Dawn M. Rivera  
Attorney at Law

DMR:me

## APPENDIX — B

[1 — 10]

	NO. OF PAGES
B — 1	5
B — 2	23
B — 3	8
B — 4	1
B — 5	5
B — 6	1
B — 7	16
B — 8	1
B — 9	2
B — 10	9

APPENDIX — 1-B

UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT

---

Room 416, 56 Forsyth Street  
Atlanta, Georgia 30303

**J. L. EDMONDSON**  
Chief Judge

21 November 2003

Dawn M. Rivera, Esq.  
Melville & Johnson, P. C.  
44 Broad Street, N.W.  
Suite 222, The Grant Building  
Atlanta, Georgia 30303

Dear Ms. Rivera:

Thank you for your letter of 19 November.

I intend to look again at the status of Ms. Johnson's EDR complaint. I hope that you will hear from me in the not distant future.

Sincerely,

/s/ J. L. Edmondson  
J. L. Edmondson  
Chief of the Eleventh

**APPENDIX — 1-B**

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November 19, 2003

**VIA CERTIFIED MAIL**

**No. 7002 0510 0004 3500 4834**

Chief Judge J. L. Edmondson  
U.S. Court of Appeals  
Eleventh Judicial Circuit  
56 Forsyth Street, N.W.  
Atlanta, GA 30303

Re: Evelyn Johnson v. Staff Attorney's Office, U.S. Court  
of Appeals for the Eleventh Circuit

Dear Chief Judge Edmondson:

This letter is written in response to your letter to Ms. Godfrey dated November 13, 2003, in which you stated that the decision of Judge Brill in the Adverse Personnel Action hearing requested by Ms. Johnson took into account Ms. Johnson's EDR claims. It is our understanding that the Court's EDR Plan requires that the chief judge or a designated judicial officer either "dismiss in writing any complaint that is found to be plainly without merit, untimely, or unduly repetitive of a previous complaint, that fails to state a claim upon which relief may be granted, or that makes claims that were not advanced in mediation," or "hold a hearing on the merits of the complaint."

In addition, we are unaware that you have designated any judicial officer to act on your behalf regarding Ms. Johnson's EDR Complaint. Although Ms. Johnson requested

## APPENDIX — I-B

that her EDR hearing be consolidated with her Adverse Personnel Action hearing, in compliance with the suggestion that you and Mr. Phelps appeared to be making, Judge Brill denied the Motion to Consolidate. Therefore, no action whatsoever has been taken yet on Ms. Johnson's EDR claims, which she initiated on July 16, 2003.

**[Pet.'s Note: Petitioner's counsel's statement here clearly denotes the inappropriate and unethical conduct of Respondents and others involved, when they got rid of Petitioner's 2003 EDR retaliatory complaint at the December 8, 2003, "hearing" without appropriate notice to the Petitioner.]**

Further, Judge Brill's adverse personnel action decision provides no indication whatsoever that she considered the issue of whether Ms. Johnson's superiors were motivated by discriminatory animus when they terminated Ms. Johnson's employment. Instead, Judge Brill stated that she considered the issue of whether the SAO had sufficient cause to terminate the employment of Ms. Johnson. However, both Ms. Godfrey and Ms. Gilibert testified that their reasons for deciding to terminate Ms. Johnson's employment included their perceptions that Ms. Johnson suffers from a mental disability.

**[Pet.'s Note: Petitioner vehemently disagrees to Respondents' assertion that Petitioner's termination was due to her "suffer[ing] from a mental disability." Petitioner's marked emotional distress and suffering were clearly manifested by Respondents' intentional, malicious, and cruel emotional tortures without cause, they inflicted to Petitioner.]**

For example, when asked the reason for the termination decision, Ms. Godfrey testified, "Well, it was based upon the obstinate behavior as well as the unstable mental state that I perceived and other did also, and the



## APPENDIX — I-B

inability of us, my office, to do what we conceived of doing when we created that unit." (Id. at p. 95). Ms. Godfrey further testified that she did not know whether Ms. Johnson was actually unable "to cooperate and to function properly" or whether Ms. Johnson was simply refusing to do so. (Id.). Ms. Godfrey expressed a fear that Ms. Johnson's mental state made Ms. Johnson a danger to herself. (Id. at 130). Ms. Godfrey stated her belief that Ms. Johnson's concerns about computer surveillance were "paranoid" and resulted from "paranoia." (Id. at 94, 117). In addition, Ms. Godfrey stated a belief that Ms. Johnson's request for an adverse personnel action hearing may indicate that "Evelyn is seriously ill." (Id. at 130).

Ms. Gilibert also testified that her concerns about the "emotional state" of Ms. Johnson motivated her decision to terminate Ms. Johnson's employment. (Adverse Personnel Action hearing, p. 75). Ms. Gilibert explained that Ms. Johnson's "belief that there was computer surveillance was pretty much the fact that led to the final termination. It was very disturbing and concerning. I think that there [were] things that I considered emotionally driven, things that concerned me, but when she started believing or indicating that she believed there was a conspiracy and there was computer surveillance, it was a very big concern of mine that I thought the EAP could help her with." (Id. At p. 70) When asked the reason for the termination decision, Ms. Gilibert responded: "I believe they attempted on more than one occasion to have her do her work in the way that was asked of her and she would not do it. I think in addition to that, her emotional state at that point was very concerning any help that was offered was refused." (Id. at 75).

**[Pet.'s Note: See Petitioner's record on appeal (ROA) Vols. 1-12, material evidence supporting all of Petitioner's allegations on the entire complaint, which are under the custody of the Clerk of the Federal Circuit Court of Appeals. The ROA filed with the**

## APPENDIX — 1-B

**Federal Circuit were true copies of documents, filed with the employing office, from start to finish of the entire EDR process.]**

These statements establish at least a mixed motive for the termination decision at issue. Ms. Johnson's former superiors have articulated their perceptions that Ms. Johnson suffers from a mental disability and clearly stated that these perceptions motivated their decision to terminate Ms. Johnson's federal employment. This testimony constitutes direct evidence of disability discrimination.

However, no indication exists in Judge Brill's decision that she made any determination regarding whether a mixed motive existed for the termination decision or whether the SAO would have taken the same adverse personnel action in the absence of their admitted discriminatory motive. Further, such a determination would have required that Ms. Johnson be permitted to engage in discovery pursuant to the EDR Plan. Thus, despite Ms. Johnson's best efforts to obtain relief under the Court's Employment Dispute Resolution Plan for violations of her right to equal employment opportunity, no action whatsoever has been taken under the EDR Plan. If further action on Ms. Johnson's part is required for her to obtain due process under the Court's EDR Plan, we hereby request further instruction.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

MELVILLE JOHNSON, P.C.

/s/ Dawn M. Rivera, Esq.

DMR/me

cc: Ms. Evelyn Johnson

**APPENDIX — 2-B**

**UNITED STATES COURT OF APPEALS**

**FOR THE ELEVENTH CIRCUIT**

**ADVERSE PERSONNEL ACTION**

**POLICY PROCEEDINGS**

**IN RE: Complaint of Evelyn Johnson**

**NOTICE TO THE PARTIES**

A hearing was conducted on this matter on October 29, 2003 pursuant to the Eleventh Circuit Court of Appeals Adverse Personnel Action Policy ("Adverse Action Policy"). The final decision of the designated judicial officer must be issued not later than ten (10) calendar days after the conclusion of the hearing. The attached document is being issued within the prescribed period and constitutes the undersigned's final decision in this matter.

In chambers, Atlanta, Georgia this 6<sup>th</sup> day of November 2003.

/s/ Gerrilyn G. Brill  
GERRILYN G. BRILL  
United States Magistrate Judge  
(Designated Judicial Hearing Officer)

## APPENDIX — 2-B

IN RE: Complaint of Evelyn Johnson

### DECISION OF THE JUDICIAL OFFICER

This is a proceeding pursuant to the Eleventh Circuit Court of Appeals Adverse Action Policy. Evelyn Johnson ("Petitioner") contends that the Staff Attorneys' Office for the Eleventh Circuit Court of Appeals ("SAO") has terminated her employment without sufficient cause.<sup>1</sup> For the reasons discussed below, the relief requested by Petitioner must be **DENIED** and the Adverse Action against Petitioner should be **APPROVED**.

### Procedural History

Petitioner began working for the SAO as an Administrative Assistant in January 1989. (Tr. 134-135).<sup>2</sup> On June 20, 2003, SAO Senior Staff Attorney Naomi Godfrey

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<sup>1</sup> The parties disagree as to the standard that should be applied by the undersigned in deciding whether the adverse action should be approved. Petitioner argues that the SAO must show "substantial evidence" to justify her termination. The SAO argues that it need only show that its action was not "totally without merit." Assuming, without deciding, that Petitioner is correct, the Court finds that the SAO has shown substantial evidence to justify the termination of Petitioner's employment.

<sup>2</sup> All transcript references are to the transcript of the October 29, 2003 hearing. Similarly, all references to exhibits are to documents submitted by the parties at the hearing.

## APPENDIX — 2-B

wrote a letter to Petitioner informing her that she was being terminated due to "insubordinate behavior, unsatisfactory work, and inappropriate conduct in the discharge of [her] responsibilities." (Def. Ex. 11). On June 26, 2003, Petitioner made a written request for a hearing on her proposed termination, as permitted under the Adverse Action Policy. Chief Judge J.L. Edmondson granted Petitioner's request and designated the undersigned Magistrate Judge to conduct the hearing. The hearing was held on October 29, 2003, with Petitioner, Ms. Godfrey, Sara Gilibert, and counsel for both parties in attendance.

### **Background Facts**

The facts set forth herein are based on the testimony and documentary evidence submitted at the hearing, and papers submitted during the Adverse Action Policy process, which the undersigned finds admissible and credible. Unless specifically cited herein, the contents of particular exhibits were not relied upon by the undersigned in reaching this final decision.

Petitioner transferred to the Eleventh Circuit SAO in 1989 as an Administrative Assistant. (Tr. 134-135). On

## APPENDIX — 2-B

September 10, 2001, she was promoted to Human Resources Coordinator. (Tr. 100-102). While certain aspects of Petitioner's duties may have changed over the years, she continued working in that general capacity through the date of the evidentiary hearing. (Tr. 136-138). In 1995, Ms. Godfrey was promoted to Senior Staff Attorney and became Petitioner's indirect supervisor. (Tr. 83, 96). Ms. Godfrey remained in that position through the date of the evidentiary hearing. (Id.).

In October 2001, the SAO decided to create a new intermediate supervisory position in the personnel department called Manager of Recruiting. (Tr. 103-104, Def. Ex. 1). The new Manager would report directly to Ms. Godfrey and would be responsible for overseeing the day-to-day work of the recruiting, hiring and personnel staff. (Def. Ex. 1). Petitioner apparently applied for, but was not awarded, this position. (See EDR Hearing Decision dated Nov. 14, 2002, at p. 11, attached as Ex. B to Def. Resp. to various motions filed by Petitioner). [Pet.'s Note: **Although Petitioner applied for the position when it was re-advertised the second time, Petitioner's**



## APPENDIX — 2-B

application was never considered, and the only application that did not go through the normal recruiting process.]. Instead, an attorney named Sara Gilibert was hired to fill the position. (Tr. 10).

Ms. Gilibert began working as the SAO Recruitment Manager on January 22, 2002. (Id.) Her duties included supervising Petitioner and Jackie Williams, another member of the SAO support staff. (Tr. 11).

Over the next few months, Ms. Gilibert began to perceive that Petitioner resented her efforts to act as Petitioner's supervisor. (Tr. 19). On numerous occasions, Petitioner was slow to respond, or did not respond at all, to Ms. Gilibert's requests for information. (Tr. 18). For example, when Ms. Gilibert's repeatedly asked Petitioner to write up a list of her job responsibilities to assist with a possible restructuring of the work assignments, Petitioner did not do so. (Tr. 12-13). Ms. Gilibert than drafted the list on her own and asked Petitioner to provide comments; however, Petitioner did so only after a lengthy delay and additional requests from Ms. Gilibert. (Tr. 14). Petitioner's work summary during this period suggests that she had time



## APPENDIX — 2-B

to do the requested task. (Tr. 15; Def. Ex. 2). [**Pet.'s Note: Petitioner felt harassed due to retaliatory actions she was being subjected.**].

On another occasion, Ms. Gilibert asked Petitioner to call Jen Kirby, a newly-hired SAO employee, to find out when she planned to start work. (Tr. 23). Ms. Gilibert explained to Petitioner that the call had to be made within the next ten minutes, because Ms. Kirby was out of town and was waiting by the telephone. (Id.). Despite these instructions, Petitioner did not immediately make the call. (Id.). Upon walking back to her office, however, Ms. Gilibert noticed that Petitioner still had not left the copy center. (Id.). Petitioner went to make the call only after Ms. Gilibert returned to the copy center and ordered Petitioner to the telephone. (Id.).

During 2002, there was "very, very little communication" between Petitioner and Ms. Gilibert. (Tr. 20). Most of the time, Petitioner did not respond to Ms. Gilibert's e-mails. (Tr. 24). Although Ms. Gilibert generally gave Petitioner assignments orally, in person, Petitioner would usually place the completed assignments in Ms.

## APPENDIX — 2-B

Gilibert's mailbox rather than speaking to her directly. (Tr. 20-21). Petitioner rarely called Ms. Gilibert on the phone, and "would never come to [Ms. Gilibert's] office." (Tr. 20). Ms. Gilibert believed that "if [Petitioner] could avoid . . . contact [with Ms. Gilibert], . . . she would." (Id.). As a result, Ms. Gilibert "had to follow-up quite frequently" with Petitioner about assignments. (Tr. 22). According to Ms. Gilibert,

There were a lot of things I never received. There are things that I asked to be done and I didn't realize they hadn't been done until something was asked f[or] — one of the examples is personnel files. One of the judges had requested resumes and transcripts from a certain individual's personnel files and they weren't fresh copies. They were written on and everything else. And that was something that I had asked [Petitioner] to do and it was something I found out at [the] last minute. . . . I rushed and started redacting and trying to get liquid paper . . . so we could get a clean copy to the judges in a timely manner. But things like that would come up where I didn't know the project was not completed until something like that happened.

(Id.).

On December 4, 2002, Ms. Gilibert sent Petitioner an e-mail asking her to set up some meetings to go over separation paperwork with attorneys who were leaving the

## APPENDIX — 2-B

SAO's office. (Tr. 25; Def. Ex. 4). On December 6, 2002, having received no return e-mail from Petitioner, Ms. Gilibert sent a follow-up e-mail asking Petitioner to "please respond" and "simply let [her] know that the [Dec. 4] e-mail was received and that any requests set forth therein will be taken care of." (Tr. 26, Def. Ex. 4). The e-mail noted that there were "several things [Ms. Gilibert] ha[d] asked [Petitioner] to do in the past few weeks and, to my knowledge, they have not yet been completed. . . ." (Id.).

That afternoon, Petitioner sent Ms. Gilibert a reply e-mail that simply read "Please see attached." (Tr. 27, Def. Ex. 4, p. 2). Attached to the e-mail was a two-page Word Perfect document written by Petitioner and addressed "Sara." (Id.).

The tone of this document was hostile. The first paragraph reads:

I resent the fact that you keep getting on my back to know if the job is done or not. Before you even came to work here for the last 13 years, 10 months, and 19 days, nobody had been keeping tabs if my work has been done or not, that is, with more work and less help. I do have initiative, self-directed, and do get the job done. I am not a kid and do not have to be told twice, and most of all, I do resent your attitude for doing that. . . .

## APPENDIX — 2-B

(Def. Ex. 4, p. 2). The letter then outlined the status of the matters that had been assigned to Petitioner, using phrases such as “[F]or your information, I spoke with [name omitted] . . . .,” “[F]or your additional information . . . .,” and “You have no clue how long it takes to put together that report. . . .” (Id.). The document also states: “I have been doing this for almost four years, and granted there could be snafus to occur, [sic] don’t blame it here.” (Id.). Petitioner then takes issue with some of the work Ms. Gilibert had assigned to Petitioner. (Id. at p. 3). For example, Petitioner states: “The chart you are talking about, Cathy Hester puts it out, why am I to update it” She should update that . . . .” (Id.). The letter concludes with the following statement:

Last but not least, if you ask me to do something, consider it done. You have not been here long enough to know everything, and to preserve harmony, please stay off my back. Thank you.

(Id.). [**Pet.’s Note: Petitioner, at this point, was already sick and tired of daily work scrutiny, threats, and harassment.**].

Ms. Gilibert was “really, really taken aback” by Petitioner’s letter and felt that “the level of disrespect, of

## APPENDIX — 2-B

emotional anger, . . . was quite shocking.” (Tr. 28-29). She printed a copy of the e-mail and took it to Petitioner’s office to discuss it with her. (Tr. 29). At that point, Petitioner told Ms. Gilibert that she had never been supervised before, that it made her feel like she was being treated like a child, and that there was “a lot going on” that Ms. Gilibert didn’t know about. (Tr. 30). Petitioner became very “emotional and . . . upset” and continued to say that “[t]here’s a lot going on, but I don’t want to go there.” (Id.). The meeting concluded with Ms. Gilibert telling Petitioner that her conduct had been “insubordinate” and “absolutely unacceptable” and that it could not happen again. (Tr. 31). **[Pet.’s Note: Not true. Petitioner worked under the supervision of Karen Sinyard and Naomi Godfrey. Petitioner stated she was self-directed, worked independently with little supervision.]**

In January 2003, Karen Sinyard, the SAO’s Administrative Manager, asked all of the SAO employees to give her their computer passwords. (Tr. 31). Ms. Sinyard did not request the employees’ e-mail passwords; only their general Windows passwords. (Id.). The purpose of this

## APPENDIX — 2-B

request was to allow the SAO supervisors to access business documents on an employee's hard drive if it became necessary during an employee's absence. (*Id.*). Petitioner refused to provide her password. (Tr. 32). [Pet.'s Note: Karen Sinyard never had problems with Petitioner on this issue before, but only after Petitioner realized the SAO was monitoring her computer, creating computer problems and impeding her work. Disclosures of passwords mostly apply to staff attorneys so another staff could access a staff attorney's PC when he/she is out, and judge(s) requested that the attorney's prepared memo e-mailed to them directly.].

On February 5, 2003, Ms. Gilibert sent Petitioner an e-mail asking her to "please open and respond to e-mails from all court personnel in a timely manner." (Tr. 32-33; Def. Ex. 6). When Petitioner asked what e-mails Ms. Gilibert was referring to, she replied that Petitioner was the only SAO employee who had not answered Ms. Sinyard's e-mail asking for her current computer password. (Tr. 34-35; Def. Ex. 7). Petitioner responded to Ms. Gilibert with the following message:



## APPENDIX — 2-B

I know I have not responded to Karen's requests for password because I know if she needs to, she already has access to my computer and printer. . . . WE are the only ones supposed to know our password even the automation employees don't have our password, and we are not to give it out to anyone if there is nothing on the computer that another employee would have any need to access. Nevertheless, Karen still has access to my computer without me giving her my password. If this becomes such a big issue, Karen can remove the computer out of my office. Thanks.

(Def. Ex. 7) (emphasis in original). Petitioner did not provide her password in the message. (Id.).

That same day, Ms. Gilibert gave Petitioner a "letter of warning" based on Petitioner's "refusal and/or failure to comply with an appropriate instruction from [her] supervisor." Tr. 36; Def. Ex. 8). The letter continued:

I have specifically asked you to forward your current computer password to the office's Administrative Manager, Karen Sinyard. As I informed you, it is important that we maintain a master list of all current passwords, and you are the only employee in the office who has yet to provide one. This is despite two e-mail requests from the Administrative Manager and a directive from me.

Once again, you are expected to forward current computer password to the Administrative Manager immediately. Should



## APPENDIX — 2-B

you fail to do so, the consequence will result [sic] in further corrective and/or adverse action, up to and including immediate dismissal.

(Id.). Despite this warning, Petitioner continued to refuse to provide her password for some time. <sup>3</sup>

After this incident, Ms. Gilibert observed Petitioner crying on several occasions. (Tr. 38). At these times, Petitioner told Ms. Gilibert that she was going to have to “file” something and that Ms. Gilibert “shouldn’t be in the middle of this.” (Id.). Ms. Gilibert received “absolutely no communication” from Petitioner “despite any efforts.” (Id.). **[Pet.’s Note: Yes, due to demoralizing work, hostile environment, and daily harassment.].** If Petitioner made a mistake in her paperwork, Ms. Gilibert would not find out about it until a staff attorney or other employee brought it to her attention. (Tr. 38-39). Because of Petitioner’s conduct, Ms. Gilibert frequently found herself performing tasks that she would otherwise have delegated to Petitioner. (Tr. 39).

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<sup>3</sup> See Def. Exh. 10 (March 12, 2003 letter from Ms. Gilibert to Petitioner stating “Despite three directives from me [including a written warning], you have refused or declined to disclose the password to your government-supplied computer. . . .”

## APPENDIX — 2-B

[Pet.'s Note: Petitioner wondered what mistakes attorneys or employees (and who were they?) brought to Gilibert's attention? Petitioner used to do all the work, by herself, at four grades lower than Gilibert, for almost four (4) years with no known problems, and evidenced by excellent performance evaluations before Gilibert's employment there].

At about the same time, Petitioner began having problems with her computer. She told Ms. Gilibert that there was a conspiracy to watch her through computer surveillance. (Id.). At one point, Petitioner e-mailed Norman Zoller, the Circuit Executive, and J.L. Edmondson, Chief Judge of the Eleventh Circuit Court of Appeals, about a problem she was having with her printer. (Def. Ex. 9). In the e-mail, which Ms. Gilibert considered "highly inappropriate," Petitioner used phrases such as "I am trying to work here . . . ." and "This inappropriate action needs to stop." (Tr. 40, Def. Ex. 9). [Pet.'s Note: Petitioner e-mailed them to report the computer breach and constant PC problems due to PC monitoring. About the same time frame, Naomi Godfrey asked Sara

## APPENDIX — 2-B

Gilibert to refer Petitioner to EAP to document anything they could use against Petitioner and malign her character, as they wanted to terminate Petitioner's employment.].

Ms. Gilibert became concerned about Petitioner's behavior that, on March 12, 2003, she referred her to the Employee Assistance Program ("EAP"), a confidential counseling service for federal employees. (Tr. 40-41; Def. Ex. 10). Ms. Gilibert did this because she "had reached a point where there was in [her] mind nothing that [she] could do to make [Petitioner] a productive member of [her] team." (Tr. 41). Ms. Gilibert saw the program as a "last-ditch attempt" for Petitioner to improve her performance. (*Id.*). In the letter referring Petitioner to the EAP, Ms. Gilibert states:

Despite repeated efforts to communicate with you (and to counsel you) over the past year, you have continued to display outward resentment toward being supervised and, at times, to blatantly refuse of fail to comply with appropriate instructions from me as your direct supervisor. . . . [Y]ou continue to carry out your duties only according to how you perceive them and respond to my efforts to align your priorities with those as assigned to me by my

## APPENDIX — 2-B

supervisors with indifference and hostility. My attempts to counsel you with the hopes of opening communication lines and improving specific work and attendance related deficiencies have been met by you with anger and resentment.

Despite three directives from me (including a written warning), you have refused or declined to disclose the password to your government-supplied computer.... Your continued refusal to supply your password creates inefficiencies, unneeded duplication, and unsatisfactory work.

**[Pet.'s Note: All happened in 2002 after filing the EDR complaint and death of Petitioner's mother.]**

You have refused to have your work reviewed by me before you summarily and without my prior authorization, distribute it office-wide, contrary to my express instructions. Some of these unilateral, unapproved distributions by you have resulted in inapplicable or erroneous information being disseminated.

**[Pet.'s Note: Nothing out of ordinary Petitioner had done in the past. Petitioner e-mailed SAO employees to pass on to them information from AO regarding taxes and COLA.]**

You have failed to communicate with me and with other administrative staff so as to reduce or minimize errors. On at least two occasions, I had instructed you to immediately contact other administrative staff whom you had been refusing to respond to despite their repeated attempts to reach you while you were present in the office.

\* \* \*

## APPENDIX — 2-B

You have challenged my authority as your supervisor and responded to my work requests with inaction, indifference or hostility. Your written remarks to me of December 6, 2002 that I should "stay off [your] back" and other confrontational comments are inappropriate, if not insubordinate.

\* \* \*

We have discussed these issues both formally and informally, but you have not wanted to discuss in detail the reasons for your conduct and performance. If these problems continue, some type of disciplinary action will be taken. I strongly recommend that you take whatever action is necessary to immediately improve. While I may not be fully aware of the reasons for these problems, I am concerned about them and about you. . .

Therefore, I direct you to contact the EAP. . . . You will be granted administrative leave to attend EAP sessions. . . . You are expected to fully cooperate and participate in the EAP. The conduct and performance problems I noted above must be corrected. With an effort on your part and help [from] EAP, I am hoping you can correct these issues.

(Def. Ex. 10, pp. 1-2). Although Petitioner initially made an appointment for EAP counseling, she did not keep the appointment. (Tr. 44). Petitioner received a letter of termination on June 20, 2003. (Def. Ex. 11).

### Discussion

It is the finding of the undersigned hearing officer

## APPENDIX — 2-B

that the Eleventh Circuit SAO had just cause to terminate Petitioner's employment. Petitioner's repeated insubordination, failure to communicate with and hostility toward her supervisor Ms. Gilibert, and other inappropriate conduct as described above, clearly justify the SAO's action.

Petitioner does not deny many of the basic facts Ms. Gilibert testified to in her direct examination. For example, she did not attempt to justify her delay in telephoning Jen Kirby or her delay in providing Ms. Gilibert with a list of her job duties. (Tr. 134-165). Petitioner admits that she and Ms. Gilibert "just don't communicate" (Tr. 156) and that there was "a lack of communication coming from [Petitioner]." (Tr. 165). **[Pet.'s Note: Due to the fact that Petitioner was kept out of the loop on everything related to her former duties and responsibilities, there was nothing to communicate to the Respondents. Rather, Respondents kept Petitioner in the dark about what was going on in the office, specifically personnel matters and administration.].** Petitioner also stated that she "felt uncomfortable" about giving Ms. Gilibert a written

## APPENDIX — 2-B

job description because she felt Ms. Gilibert was trying to "tak[e] over" her job duties:

Q. Would you want to explain why you felt uncomfortable about Ms. Gilibert's instructions to you [to write down your job duties]?

A. Well, because those were my duties and [Ms. Gilibert] wanted all the specifics . . .

. And rather than Ms. Godfrey addressing, you know, [Ms. Gilibert's] duties that were supposedly her duties rather than taking over my duties, it is just — to me, it 's just so appalling that I was even asked to do such a thing.

Q. Okay. So you found this instruction appalling?

A. Well, because what it is, just like I explained earlier, Ms. Gilibert' position came out of my original position, which I handled solely by myself for over three years without compensation. . . .



## APPENDIX — 2-B

(Tr. 159-160). Petitioner further testified that she found it “so annoying” that Ms. Gilibert kept “checking up on [her].” (Tr. 163). She admits she sent the e-mails attributed to her, including the one on December 6, 2002 telling Ms. Gilibert to “stay off her back.” (Tr. 163). She admits that the e-mail expressed her “tru[e] . . . feelings about Ms. Gilibert. (Id.). [Pet.’s Note: Yes, because Petitioner already had it with the Respondents due to Naomi Godfrey’s campaign, which included Karen Sinyard and Sara Gillibert, to make Petitioner’s life miserable by constant and daily harassment, threats of disciplinary action or termination without cause, due to her filing of the 2002 EDR complaint.]

Petitioner also admits that she refused to give her computer password to Ms. Sinyard for several months, despite repeated requests from Ms. Sinyard and Ms. Gilibert and a written letter of warning from Ms. Gilibert. (Tr. 146-147). In that regard, Petitioner testified:

Before, Karen Sinyard had asked for a password. I don’t have any problem. I gave it to her. But since last year that I have been through this mess at the office, . . . it’s just my way of, you know, telling her no. I’m not going

## APPENDIX — 2-B

to, you know, do it, because she has access on my computer already and I know it.

(Id.).<sup>4</sup>

Finally, Petitioner admits that she did not attend the EAP counseling that Ms. Gilibert ordered her to go to in an effort to improve her performance. (Tr. 154) (stating that she did not go because "that's another way of them to . . . malign my character."). **[Pet.'s Note: Why this kind of behavior? Petitioner did not resent Sara Gilibert's supervision but Respondents' actions, constant trivial work nitpicking, and character attacks without foundation.]**

In sum, Petitioner admits that she resented Ms. Gilibert's attempts to supervise her, that she sent a hostile

---

<sup>4</sup> Although Petitioner's counsel initially suggested that Petitioner did not give up her password because the office had a written policy prohibiting such disclosure, Petitioner later denied that this was the case:

Q. Ms. Johnson, am I correct that the basis of your refusal to give your password to Ms. Sinyard was something contained in what's been marked as plaintiff's exhibit number 1 (the "Automation User's Manual")?

A. No, not — I don't have any problems with that, like I said earlier, giving it to her before. The reason why I didn't want to give it to her is because I felt that she already knew my password and she's accessing my computer. I don't really need to give it to her. And it's just something that they are trying to do so document something.

## APPENDIX — 2-B

and insubordinate e-mail message to Ms. Gilibert, that she refused to provide her computer password despite numerous requests, and that she refused to go to counseling despite being warned that failure to resolve her behavior problems would result in her termination. Given these admitted facts, and the other evidence presented at the hearing, the Court finds that the SAO acted with just cause in terminating Petitioner's employment.

The Court further finds that Petitioner's June 26, 2003, request for a hearing, while generally permitted under the Adverse Action Policy, was pursued frivolously given the conduct Petitioner admits she engaged in with respect to Ms. Gilibert. The Court does not have sufficient information at the hearing, or whether her request for a hearing was motivated by a malicious intent. **[Pet.'s Note: NOT SO. Evidence Respondents provided were after-the-fact justification documenting Petitioner's upcoming involuntary termination due to her filing of 2002 EDR complaint. (See Appendix D, Respondents' Exhibits submitted in court at the October 29, 2003, Adverse Action Hearing. Note that the dates on those Exhibits**

## APPENDIX — 2-B

evidenced the fact that those documents were created and compiled while Petitioner was involved in the EDR process. Note also documents submitted by Petitioner throughout the process, where Petitioner was documenting Respondents' retaliatory actions, were same documents Respondents had submitted to court because there was nothing in Petitioner's record justifying Respondents' unlawful, evil spirited, intentional, and malicious adverse personnel actions Petitioner was put throughout the whole ordeal.].

### Conclusion

For the reasons set forth above, it is determined that Petitioner's June 26, 2003, request for relief under the Eleventh Circuit Adverse Personnel Action Policy should be **DENIED** and the termination of Petitioner should be **APPROVED**.

In chambers, Atlanta, Georgia this 6<sup>th</sup> day of November 2003.

/s/ Gerrilyn G. Brill \_\_\_\_\_  
Gerrilyn G. Brill  
United States Magistrate Judge  
(Designated Judicial Hearing Officer)

APPENDIX — 3-B

MELVILLE JOHNSON, P. C.  
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November 4, 2003

VIA FIRST CLASS MAIL

Mr. Robert Phelps  
EDR Coordinator & Chief Deputy Clerk  
U.S. Court of Appeals  
Eleventh Judicial Circuit  
56 Forsyth Street, N.W.  
Atlanta, GA 30303

Re: Evelyn Johnson v. U.S. Court of Appeals for  
the Eleventh Circuit

Dear Mr. Phelps:

This letter is written in response to your assertion that you are "without authority to proceed further" on Ms. Johnson's EDR claim and to your suggestion that the Adverse Personnel Action hearing on October 29, 2003, would somehow address claims of discrimination and retaliation made by Ms. Johnson several months ago, pursuant to the Court's Employment Dispute Resolution (EDR) Plan. **Please be advised that Judge Brill declined to consolidate the Adverse Personnel Action hearing and the EDR Complaint. Therefore, no action whatsoever has been taken yet on Ms. Johnson's EDR claims.**

As you may recall, Ms. Johnson, through counsel, timely requested consultation under the Employment

## APPENDIX — 3-B

Dispute Resolution Plan of the Court on July 16, 2003, pursuant to the Notice of Termination she received on June 20, 2003. In response, your only action appears to have been to send Ms. Johnson a Waiver of Confidentiality form. However, on August 18, 2003, you advised Ms. Johnson that consultation had ended. When this firm contacted you to request an explanation, you stated only that you thought Ms. Johnson had left the state. In fact, Ms. Johnson continues to reside in the Atlanta area, and it does not appear that either declining to waive confidentiality or traveling out of state negates your obligation to engage in the EDR process upon an employee's request. Further, you have failed to articulate what exactly you believe Ms. Johnson should have done to obtain consultation under the EDR Plan.

On September 5, 2003, Ms. Johnson requested information as to how you wished to proceed with her EDR claims and requested a copy of the EDR Plan. In response, you provided a copy of the Plan without the forms necessary to request mediation or a hearing. On September 12, 2003, after obtaining a copy of the form to request EDR mediation from SAO counsel, Ms. Johnson filed a request for EDR mediation. In response, on September 22, 2003, you advised that "matters related to issues Ms. Johnson has raised" would be addressed at the Adverse Personnel Action hearing. You enclosed with this letter a copy of Chief Judge Edmondson's August 28, 2003 letter to Judge Brill regarding the Adverse Personnel Action hearing.

[Pet.'s Note: In looking at the whole picture, the totality of facts, all anti-discrimination allegations regarding this case, and considering how the 2002 EDR complaint was processed and dismissed, Petitioner firmly believes impartial and prejudicial adjudication of this case in the Eleventh Circuit. Furthermore, the referenced letters to this Appendix, Robert Phelps, Court EDR Coordinator, actions, and Judge Edmondson's August 28, 2003, letter to Judge Brill were attempts to coerce Judge Brill in rendering



APPENDIX — 3-B

her final decision regarding this case.].

As you should know, the purpose and procedures of the EDR Plan are substantially different from that of the Court's Adverse Action policy. For example, discovery is available prior to an EDR hearing, but not for an Adverse Personnel Action hearing. In addition, the purpose of an Adverse Action hearing is to require the court employer to demonstrate good cause before it may take an adverse employment action against an employee. In contrast, the purpose of an EDR hearing is to permit an employee to prove that the court employer has violated the employee's rights to equal employment opportunity, to FMLA leave, to a safe workplace, etc.

However, in compliance with the suggestion that you and the Chief Judge appeared to be making, Ms. Johnson filed an EDR Complaint requesting a hearing and moved for it be consolidated with the Adverse Personnel Action hearing. Although Judge Brill has denied the Motion to Consolidate, we have not received a response from Chief Judge Edmondson regarding Ms. Johnson's EDR Complaint hearing request. If further action on Ms. Johnson's part is required for her to obtain a hearing on her EDR claims, we hereby request that you provide further instruction.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

MELVILLE JOHNSON, P.C.

/s/ Dawn M. Rivera

Attorney at Law

DMR:me

Enclosure

cc: Ms. Evelyn Johnson



**APPENDIX — 3-B**

**UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT**

---

Room 416, 56 Forsyth Street  
Atlanta, Georgia 30303

**J. L. EDMONDSON**  
Chief Judge

28 August 2003

Honorable Gerrilyn G. Brill  
United States Magistrate Judge  
United States District Court  
1690 Richard B. Russell Federal Building  
75 Spring Street, S.W.  
Atlanta, Georgia 30303-3361

Dear Judge Brill:

In connection with the request for adverse action hearing by an employee of this Court's Staff Attorneys' Office, and in furtherance of my designation to you on 30-June 2003, I understand that a hearing has been now scheduled for 25 September 2003. In addition to the other issues in controversy, I ask you - if it is feasible for you to do so - to consider and to make findings on whether Ms. Johnson's request, complaint or other document setting out her claim for a hearing was filed or pursued frivolously or maliciously or whether knowingly false information was presented at any point in these proceedings. I also ask that you examine and make findings of fact on the issue of whether this request for adverse action hearing requested by the employee was filed to harass or to undermine good management or discipline by a supervisor or within an office. I, of course, intimate nothing about the correct resolution of these issues.

**APPENDIX — 3-B**

I appreciate your undertaking to hear this matter.

Faithfully yours,

/s/ Larry

J. L. Edmondson

Chief of the Eleventh

Copy:

Mr. Jeffrey O. Bramlett, Esq.

Ms. Naomi Godfrey, Esq.

Ms. Evelyn Johnson

Ms. Mattie P. Johnson, Esq.

APPENDIX — 3-B

UNITED STATES COURT OF APPEALS  
ELEVENTH JUDICIAL CIRCUIT  
56 Forsyth St., N.W.  
Atlanta, Georgia 30303

Robert Phelps  
Chief Deputy Clerk

August 18, 2003

Evelyn Johnson  
6241S. Skyline Drive  
Douglasville, Georgia 30135

Dear Ms. Johnson:

Having not heard from you or your representative since facsimile receipt of your July 16, 2003, complaint, I am closing this file without action. The thirty-day time frame for consultation and resolution of this complaint has passed without any contact by you or your representative, or a signed waiver form. I conclude that you are pursuing other avenues.

If you have any questions or require further information, please feel free to write or call at your convenience.

Sincerely,

/s/ Robert Phelps  
Robert Phelps  
Chief Deputy Clerk

cc: Mattie P. Johnson, Esq.  
File

APPENDIX — 3-B

UNITED STATES COURT OF APPEALS  
ELEVENTH JUDICIAL CIRCUIT

56 Forsyth St., N.W.  
Atlanta, Georgia 30303

Robert Phelps  
Chief Deputy Clerk

July 22, 2003

Evelyn Johnson  
6241S. Skyline Drive  
Douglasville, Georgia 30135

RE: Complaint and Request for Consultation

Dear Ms. Johnson:

I acknowledge receipt of the document you sent me by facsimile on July 16, 2003, labeled "Complaint and Request for Consultation." Before I am able to act further on this matter, I request that you consider and then, if you so decide, file with me a "Waiver of Confidentiality," on the attached form. At this point I do not know if it will be appropriate to continue processing your request under the Court's Employment Dispute Resolution (EDR) Plan, but before I am able to do anything to assist with the issue you raise, including possible contact with the chief judge, I will need to have a waiver from you for me to begin contacting the appropriate persons.

Sincerely,

/s/ Robert Phelps  
Robert Phelps  
EDR Coordinator

## APPENDIX — 3-B

Appeal file

[Pet.'s Note: The issue here was the untimely return of the waiver form. While Phelps contended he furnished a copy of the form to Petitioner's counsel, Mattie P. Johnson at the time, and whose practice is in Washington, D.C., Phelps failed to copy this letter to Mattie P. Johnson. This letter was addressed to Petitioner although Petitioner specifically stated on the court personnel Exh. D1, Complaint and Request for Consultation, Petitioner faxed to Phelps on July 17, 2003, Petitioner asked to "refer all inquiries to the retained counsel." (See Appendix 16-A, Fax transmittal addressed to Phelps.).

APPENDIX — 4-B

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October 27, 2003

**VIA HAND DELIVERY  
& FIRST CLASS MAIL**

Chief Judge J. L. Edmondson  
United States Court of Appeals  
for the Eleventh Circuit  
Northern District of Georgia  
56 Forsyth Street, N.W.  
Atlanta, GA 30303

Re: Evelyn Johnson v. Staff Attorneys' Office, U.S. Court Of  
Appeals for the Eleventh Circuit

Dear Chief Judge Edmondson:

Enclosed please find *Complainant's Complaint Under  
Employment Dispute Resolution Plan, Motion to Consolidate  
& Motion to Clarify the Issues to Be Determined and  
Memorandum of Law in Support Thereof*. Thank you very  
much for your attention to this matter. If you have any  
questions, please do not hesitate to call.

Very Truly Yours,  
MELVILLE JOHNSON, P.C.  
/s/ Dawn M. Rivera, Esq.

DMR:me  
Enclosure

APPENDIX — 5-B

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
1690 U.S. Courthouse Building  
75 Spring Street, S.W.  
ATLANTA, GEORGIA 30303-3361

Gerrilyn G. Brill                      TEL (404) 215-1365  
United States Magistrate Judge      FAX (404) 215-1564

October 14, 2003

Ms. Dawn M. Rivera  
Melville Johnson, P.C.  
44 Broad St., N.W.  
Suite 222, The Grant Building  
Atlanta, Georgia 30303

Mr. Ronan P. Doherty  
Mr. Jeffrey O. Bramlett  
Bondurant, Mixon & Elmore, LLP  
3900 One Atlantic Center  
1201 West Peachtree St., N.W.  
Atlanta, Georgia 30309

Re: Evelyn L. Johnson matter

Dear Ms. Rivera and Messrs. Doherty and Bramlett,

In response to Mr. Doherty's letter of October 10, 2003, Mr. Zoller may be excused from attending the October 29, 2003 hearing. His testimony may be deferred to a time that is convenient to all concerned.

Yours truly,

/s/ Gerrilyn G. Brill  
UNITED STATES MAGISTRATE JUDGE

cc: Mr. Norman E. Zoller      VIA FAX



**APPENDIX — 5-B**

**BONDURANT, MIXSON & ELMORE, LLP**

**Attorneys at Law**

**5900 One Atlantic Center**

**1201 West Peachtree Street, N.W.**

**Atlanta, Georgia 30309-3417**

**(404) 881-8100**

**Telecopier (404) 881-4111**

**October 10, 2003**

**Honorable Gerrilyn G. Brill,  
U.S. Magistrate Judge  
U.S. District Court for the Northern District of Georgia  
1690 U.S. Courthouse Building  
75 Spring Street, S.W.  
Atlanta, Georgia 30303-3309**

**Re: Ms Evelyn L. Johnson's Hearing**

**Dear Judge Brill:**

As you will recall, the Staff Attorneys' Office for the U.S. Court of Appeals for the Eleventh Circuit (the "SAO") and Ms. Johnson had agreed to identify potential witnesses upon whose testimony they might rely at the hearing on Ms. Evelyn Johnson's termination, scheduled for October 29, 2003. At the Court's direction, Ms. Johnson served her witness list upon counsel for the SAO on September 26, 2003 (copy enclosed as Exhibit A). In addition to listing herself, Ms. Johnson's list identifies three witnesses. The SAO has confirmed that two of these witnesses, Ms. Godfrey and Ms. Gilibert, will be able to attend the hearing.

Ms. Johnson's witness list, however, also identifies Norman Zoller, Circuit Executive for the U. S. Court of Appeals for the Eleventh Circuit, as a potential witness. Mr. Zoller has informed counsel for the SAO that his duties for the Court of Appeals will require him to travel away from

## APPENDIX — 5-B

Atlanta on October 29-30, 2003 and thereby render him unavailable to testify at the October 29 hearing. Accordingly, Mr. Zoller has requested that the SAO petition the Court to excuse his appearance at the hearing or at least defer his testimony. For the Court's convenience, I have enclosed a true and correct copy of Mr. Zoller's letter request hereto as Exhibit B.

Mr. Zoller's testimony can have little or no relevance to the sole issue before the Court on October 29, namely whether the SAO's DECISION TO TERMINATE Ms. Johnson "is totally without merit." See Eleventh Circuit Personnel Manual Appendix No. 2. As Mr. Zoller's letter explains, Ms. Johnson has never worked for the Circuit Executive's Office or under Mr. Zoller's direct supervision. Indeed, the only mention of Mr. Zoller in the documents that the parties have identified and exchanged to prepare for Ms. Johnson's hearing appears in an exchange of e-mails regarding the Eleventh Circuit policies regarding employees' use of computers (copy enclosed as Exhibit C). Unless Ms. Johnson denies sending these messages to Mr. Zoller (and the other recipients listed) or receiving Mr. Zoller's replies, the SAO can envision no topic on which Mr. Zoller's testimony would be relevant to the October 29 hearing. Accordingly, the SAO respectfully requests the Court to excuse Mr. Zoller from attending the hearing on Ms. Johnson's termination.

I have contacted Ms. Johnson's counsel to determine whether Ms. Johnson oppose this request. Although Ms. Johnson's counsel cannot predict with any particularity what light Mr. Zoller's testimony might shed on these proceedings, Ms. Johnson is not willing to forego that testimony. Ms. Johnson, would, however, be amenable to deferring Mr. Zoller's testimony until he returns to town.

Please let me know if you require any further information from the Staff Attorneys' Office on this matter.

**APPENDIX — 5-B**

Respectfully submitted,

/s/ Ronan P. Doherty  
Ronan P. Doherty

**Enclosures**

cc: Norman E. Zoller (w/encl.)  
Naomi G. Godfrey, Esq. (w/encl.)  
Sara L. Gilibert, Esq. (w/encl.)  
Jeffrey O. Bramlett, Esq. (w/encl.)  
Dawn M. Rivera, Esq. (w/encl.)

APPENDIX — 5-B

UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT

Norman E. Zoller  
Circuit Executive

56 Forsyth Street, N.W.  
Atlanta, Georgia 30303  
404/335-6535

October 9, 2003

Mr. Ronan P. Doherty  
Bondurant, Mixson & Elmore, LLP  
3900 One Atlantic Center  
1201 West Peachtree Street, N.W.  
Atlanta, Georgia 30309-3417

Dear Mr. Doherty:

I acknowledge receipt of your letter of September 30, 2003, concerning a hearing scheduled on October 29, 2003 in a personnel matter involving Evelyn Johnson. As I reported to you, I am scheduled to attend and take substantive part in a scheduled administrative meeting of the Court of Appeals at 10:00 a.m. on Thursday, October 30, 2003, in Mobile, Alabama. Because of required set-up for this meeting (I need to depart for Mobile in the morning of October 29) and logistics arrangements supporting a portrait ceremony honoring Judge Emmett Cox at 3:30 p.m. also on October 30, I respectfully request delay or excuse from my attendance on October 29.

I expect to return from Mobile either late on October 30 or early October 31. If it is believed I can add to the substance of this hearing preferably not sooner than on October 31, of course, I will faithfully attend. As I think you know, Ms. Johnson has never worked in this office nor for me personally in any capacity.

Sincerely,  
/s/ Norman E. Zoller  
Circuit Executive

c: Naomi Godfrey  
Jeffrey Bramlett

APPENDIX — 6-B

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October 8, 2003

**VIA FIRST CLASS MAIL**

Ronan P. Doherty

Bondurant, Mixson & Elmore, LLP

3900 One Atlantic Center

1201 West Peachtree Street, N.W.

Atlanta, Georgia 30309-3417

Re: Evelyn Johnson v. Staff Attorney's Office, U.S. Court of Appeals for the Eleventh Circuit

Dear Mr. Doherty:

As you know, this firm represents Ms. Johnson in her claims of prohibited personnel practices and wrongful termination against the Staff Attorneys' Office of the U.S. Court of Appeals for the Eleventh Circuit. Pursuant to this representation, we hereby request a copy of Ms. Johnson's entire personnel file, including all materials maintained in Atlanta and in other location(s). In addition, we request a copy of the Computer Security and Automation Users Guide and any other statement(s) of computer usage policies and guidelines utilized in the Staff Attorneys' Office.

Thank you for your cooperation in this matter. If you have any questions, please do not hesitate to call.

Very Truly Yours,  
MELVILLE JOHNSON, P.C.  
/s/ Dawn M. Rivera, Esq.

DMR:me

cc: Ms. Evelyn Johnson

APPENDIX — 7-B

UNITED STATES COURT OF APPEALS  
ELEVENTH JUDICIAL CIRCUIT  
56 Forsyth St., N.W.  
Atlanta, Georgia 30303

Robert Phelps  
Chief Deputy Clerk

September 22, 2003

Dawn M. Rivera, Esq.  
Melville Johnson P.C.  
44 Broad Street, N.W.  
Suite 222, The Grant Building  
Atlanta, GA 30303

RE: Complaint and Request for Consultation - Evelyn  
Johnson

Dear Ms. Rivera:

I have your letter of September 5, 2003, and its accompanying waiver of confidentiality signed by Ms. Evelyn Johnson of September 2, 2003. Based on the Court's rule for the processing of such matters, the time for conducting a consultation expired on August 18, 2003, as I advised on August 29, 2003. Accordingly, I am without authority to proceed further on this matter.

I understand that an adverse action hearing has been scheduled before Magistrate Judge Gerrilyn Brill for September 25, 2003 at 9:00 a.m. on matters related to issues Ms. Johnson has raised, in accordance with this court's Adverse Personnel Action Policy. Also enclosed for your information is a copy of the letter of August 28, 2003, from Chief Judge Edmondson.

## APPENDIX — 7-B

If you have any questions require further information,  
please feel free to write or call at your convenience.

Sincerely,

/s/ Robert Phelps  
EDR Coordinator

c:   The Honorable J. L. Edmondson  
      Naomi Godfrey  
      The Honorable Gerrilyn G. Brill  
      Mattie P. Johnson  
      Jeffrey O. Bramlett, Esq.  
      Evelyn Johnson  
      File



APPENDIX — 7-B

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA

1690 U.S. Courthouse Building

75 Spring Street, S.W.

ATLANTA, GEORGIA 30303-3361

TEL (404) 215-1365

FAX (404) 215-1564

Gerrilyn G. Brill  
United States Magistrate Judge

September 15, 2003

Ms. Dawn M. Rivera  
Melville Johnson, P.C.  
44 Broad St., N.W. Suite 222  
The Grant Building  
Atlanta, Georgia 30303

Mr. Ronan P. Doherty  
Mr. Jeffrey O. Bramlett  
3900 One Atlantic Center  
Bondurant, Mixon & Elmore, LLP  
1201 West Peachtree St., N.W.  
Atlanta, Georgia 30309

Re: Evelyn L. Johnson matter

Dear Ms. Rivera and Mssrs. Doherty and Bramlett:

This will confirm that the hearing in the above-styled matter has been rescheduled for Wednesday, October 29, 2003 at 9:30 a.m. The hearing will be held in Courtroom #2 on the 16<sup>th</sup> Floor of the Richard Russell Federal Building, 75 Spring St., S.W., Atlanta, Georgia 30303.

**APPENDIX — 7-B**

Pursuant to the parties' agreement, Ms. Rivera will provide Mr. Bramlett with copies of all documents she intends to use at the hearing no later than September 26, 2003.

Yours truly,

/s/ Gerrilyn G. Brill

**GERRILYN G. BRILL**

**UNITED STATES MAGISTRATE JUDGE**

cc: Ms. Naomi Godfrey Via Fax  
Mr. Norman E. Zoller Via FAX

**APPENDIX — 7-B**

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September 12, 2003

**VIA FIRST CLASS MAIL**

Mr. Robert Phelps  
EDR Coordinator & Chief Deputy Clerk  
U. S. Court of Appeals  
Eleventh Judicial Circuit  
56 Forsyth Street, N.W.  
Atlanta, GA 30303

Re: Evelyn Johnson v. U.S. Court of Appeals for the  
Eleventh Circuit

Dear Mr. Phelps:

As you may recall, we previously requested, on behalf of Ms. Johnson, a copy of the three types of procedures for court employees to address their employment action concerns. Although you have not responded to our requests, we have obtained a copy of the Personnel Manual of the Court from the Staff Attorney's Office counsel. This document appears to include the procedures for the EDR process, as well as a form for requesting the second phase of the EDR process, Mediation.

In our letter dated September 5, 2003, we also requested clarification of how you intend to proceed with Ms.

## APPENDIX — 7-B

Johnson's EDR claim. Please find enclosed a completed Request for EDR Mediation, if it is your intent to end the Consultation phase without having consulted with Ms. Johnson.

Thank you for your cooperation in this matter. Please do not hesitate to contact me if you have any questions.

Very truly yours,

MELVILLE JOHNSON, P.C.

/s/ Dawn M Rivera  
Attorney at Law

DMR:me

Enclosure

APPENDIX — 7-B

UNITED STATES COURT OF APPEALS  
ELEVENTH JUDICIAL CIRCUIT  
56 Forsyth St., N.W.  
Atlanta, Georgia 30303

Robert Phelps  
Chief Deputy Clerk

September 9, 2003

Dawn M. Rivera, Esq.  
Melville Johnson P.C.  
44 Broad Street, N.W.  
Suite 222, The Grant Building  
Atlanta, GA 30303

RE: Complaint and Request for Consultation - Evelyn  
Johnson

Dear Ms. Rivera:

As previously discussed, enclosed for your information are copies of this court's EDR plan, adverse action plan, and grievance procedures. If you have any questions or require further information, please feel free to write or call at your convenience.

Sincerely,

/s/ Robert Phelps  
EDR Coordinator

**APPENDIX — 7-B**

**MELVILLE JOHNSON, P. C.**  
44 Broad Street, N.W.  
Suite 222, The Grant Building  
Atlanta, Georgia 30303  
Telephone (404) 524-9111  
FAX (404) 524-6611  
email [info@melvillejohnson.com](mailto:info@melvillejohnson.com)  
[www.melvillejohnson.com](http://www.melvillejohnson.com)

September 8, 2003

**VIA FIRST CLASS MAIL**

Mr. Ronan P. Doherty  
Mr. Jeffery O. Bramlett  
Bondurant, Mixson & Elmore, LLP  
3900 One Atlantic Center  
1201 West Peachtree Street, N.W.  
Atlanta, Georgia 30309-3417

Re: Evelyn Johnson's Adverse Personnel Action  
Hearing

Dear Mr. Doherty:

Please be advised that this firm represents Ms. Evelyn Johnson with regard to her Request for a Hearing pursuant to the Adverse Personnel Action Policy of the United States Court of Appeals for the Eleventh Circuit. Please address all notices, orders, correspondence and/or questions that you may have for Ms. Johnson to the undersigned.

As indicated by the enclosed letter, we have requested a continuance of the hearing that is currently scheduled for September 25, 2003. In addition, Ms. Johnson advises us that her previous attorney, Ms. Mattie Johnson, has not yet received the materials which were to be provided by your client pursuant to the conference with Magistrate Brill. Please provide to us the documents discussed in Mattie

APPENDIX — 7-B

Johnson's letter of August 15, 2003, at your earliest convenience.

Thank you for your cooperation in this matter. Please do not hesitate to contact me if you have any questions.

Very truly yours,

MELVILLE JOHNSON, P.C.

/s/ Dawn M. Rivera, Esq.  
Dawn M. Rivera, Esq.  
Attorney at Law

DMR:me

cc: Evelyn Johnson



**APPENDIX -- 7-B**

**MELVILLE JOHNSON, P. C.**  
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email [info@melvillejohnson.com](mailto:info@melvillejohnson.com) [www.melvillejohnson.com](http://www.melvillejohnson.com)

September 5, 2003

**VIA FIRST CLASS MAIL**

Mr. Robert Phelps  
EDR Coordinator & Chief Deputy Clerk  
U. S. Court of Appeals  
Eleventh Judicial Circuit  
56 Forsyth Street, N.W.  
Atlanta, GA 30303

Re: Evelyn Johnson v. U.S. Court of Appeals for the  
Eleventh Circuit

Dear Mr. Phelps:

This letter is written in response to your letter of August 29, 2003, in which you stated the time for the Consultation phase of the EDR process has expired without any action by Ms. Johnson. I am baffled by this assertion, which appears to suggest that Ms. Johnson had some obligation to schedule consultations with the individuals who terminated her employment after filing her EDR claim. Certainly coordinating such meetings would appear to be the responsibility of the EDR Coordinator, not the Complainant.

Further, the EDR Plan does not stipulate that Ms. Johnson was required to take any action beyond filing her claim with you, and you advised me that your only communication to Ms. Johnson was to request that she sign a Waiver of Confidentiality, which is enclosed herein. If you

## APPENDIX — 7-B

intended for Ms. Johnson to take some additional action to begin the Consultation phase of the EDR process, it would appear that you have failed to articulate what that action might be. Nevertheless, since Ms. Johnson intends to continue pursuing her EDR claim, please advise as to how you intend to proceed.

In addition, when we spoke on the telephone, you advised me that you could provide a copy of the three types of procedures for court employees to address their employment action concerns. As you are well aware, Ms. Johnson had obtained legal assistance from an attorney in Washington, D.C., prior to our representation of her. Since time is quite obviously of the essence in these matters, we would prefer to obtain these procedures from your office, rather than wait for files to arrive from Washington, D.C. Therefore, we hereby renew our request for copies of materials explaining the EDR Plan, the Adverse Personnel Action Policy and the Grievance procedures.

Thank you for your cooperation in this matter. Please do not hesitate to contact me if you have any questions.

Very truly yours,

MELVILLE JOHNSON, P.C.

/s/ Dawn M. Rivera, Esq.  
Dawn M. Rivera, Esq.  
Attorney at Law

DMR:me

cc: Evelyn Johnson

APPENDIX — 7-B

UNITED STATES COURT OF APPEALS  
ELEVENTH JUDICIAL CIRCUIT  
56 Forsyth St., N.W.  
Atlanta, Georgia 30303

Robert Phelps, Chief Deputy Clerk

August 29, 2003

Dawn M. Rivera, Esq.  
Melville Johnson P.C.  
44 Broad Street, N.W.  
Suite 222, The Grant Building  
Atlanta, GA 30303

RE: Complaint and Request for Consultation - Evelyn  
Johnson

Dear Ms. Rivera:

Thank you for your letter of August 28, 2003, related to the request for consultation by Evelyn Johnson. This court's procedures clearly state that the consultation period shall not exceed thirty (30) days from receipt of the complaint, and that time frame has expired. Between the receipt of the request dated July 16, 2003, and your letter of August 28, 2003, there was no contact or communication from Ms. Johnson or her representative. Your client should have a copy of our Personnel Manual, which includes the Employee Dispute Resolution Procedures and the Adverse Personnel Action Policy for this court. Please feel free to call or write if you have any further questions.

Sincerely,  
/s/ Robert Phelps  
EDR Coordinator

c: The Honorable J. L. Edmondson  
Mattie Johnson

Evelyn Johnson  
file

**APPENDIX — 7-B**

**UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT**

---

Room 416, 56 Forsyth Street  
Atlanta, Georgia 30303

**J. L. EDMONDSON**  
Chief Judge

28 August 2003

Honorable Gerrilyn G. Brill  
United States Magistrate Judge  
United States District Court  
1690 Richard B. Russell Federal Building  
75 Spring Street, S.W.  
Atlanta, Georgia 30303-3361

Dear Judge Brill:

In connection with the request for adverse action hearing by an employee of this Court's Staff Attorneys' Office, and in furtherance of my designation to you on 30-June 2003, I understand that a hearing has been now scheduled for 25 September 2003. In addition to the other issues in controversy, I ask you - if it is feasible for you to do so - to consider and to make findings on whether Ms. Johnson's request, complaint or other document setting out her claim for a hearing was filed or pursued frivolously or maliciously or whether knowingly false information was presented at any point in these proceedings. I also ask that you examine and make findings of fact on the issue of whether this request for adverse action hearing requested by the employee was filed to harass or to undermine good management or discipline by a supervisor or within an office. I, of course, intimate nothing about the correct resolution of these issues.

I appreciate your undertaking to hear this matter.

**APPENDIX — 7-B**

**Faithfully yours,**

/s/ Larry

**J. L. Edmondson**

**Chief of the Eleventh**

**Copy:**

**Mr. Jeffrey O. Bramlett, Esq.**

**Ms. Naomi Godfrey, Esq.**

**Ms. Evelyn Johnson**

**Ms. Mattie P. Johnson, Esq**

APPENDIX — 7-B

MELVILLE JOHNSON, P.C.  
44 Broad Street, N.W.  
Suite 222, The Grant Building  
Telephone (404) 524-9111  
Fax (404) 524-6611  
email [info@melvillejohnson.com](mailto:info@melvillejohnson.com)  
[www.melvillejohnson.com](http://www.melvillejohnson.com)

August 28, 2003

Mr. Robert Phelps, EDR Coordinator  
U.S. Court of Appeals  
Eleventh Judicial Circuit  
56 Forsyth Street, N.W.  
Atlanta, GA 30303

Re: Evelyn Johnson v. U.S. Court of Appeals for the  
Eleventh Circuit

Dear Mr. Phelps:

Please be advised that this firm represents Ms. Evelyn Johnson with regard to the Complaint and Request for Consultation she filed with the Court's Employment Dispute Resolution ("EDR") Plan. Please address all correspondence and/or questions that you may have for Ms. Johnson to the undersigned.

In addition, Ms. Johnson has agreed to sign the "Waiver of Confidentiality" form that you enclosed in your letter of July 22, 2003, pursuant to her claim of retaliation. Upon our receipt of the executed form from Ms. Johnson, we will forward it to your office under separate cover. However, we note that waiving confidentiality is not a condition of participating in the EDR process. Therefore, contrary to your August 28, 2003, letter to Ms. Johnson, we anticipate that you will begin the Consultation phase of the EDR

**APPENDIX — 7-B**

Thank you for your cooperation in this matter, and we look forward to hearing from you. Please do not hesitate to contact me if you have any questions.

Very truly yours,

MELVILLE JOHNSON, P.C.

/s/ Dawn M. Rivera  
Attorney at Law

DMR:me

Enclosures

cc: Ms. Evelyn Johnson



APPENDIX — 8-B

**LAW OFFICE OF M. P. JOHNSON  
ATTORNEY AT LAW**

Woodward Building  
733 15<sup>TH</sup> Street, NW, Suite 700  
Washington, D.C. 20005

Phone: (202) 628-3498  
Fax: (202) 347-3931

July 29, 2003

Evelyn L. Johnson  
6241 South Skyline Drive  
Douglasville, Georgia 30135

**RE: Evelyn L. Johnson's Request for Hearing**

Dear Ms. Johnson:

The enclosure is a letter dated July 23, 2003, from United States Magistrate Gerrilyn G. Brill.

Please be advised that the Hearing, in your case, has been rescheduled for Thursday, September 24, 2003, at 9:30 a.m. at the Richard Russell Federal Building, 75 Spring Street, S.W., 16<sup>th</sup> Floor, Atlanta, Georgia 30303 in Courtroom #2. (A copy of the letter is enclosed).

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Mattie P. Johnson  
Mattie P. Johnson

Enclosure

mag

**APPENDIX — 9-B**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
1690 U.S. Courthouse Building  
75 Spring Street, S.W.  
ATLANTA, GEORGIA 30303-3361**

**Gerrilyn G. Brill  
United States  
Magistrate Judge**

**TEL (404) 215-1365  
FAX (404) 215-1564**

**July 23, 2003**

**Ms. Mattie P. Johnson  
Woodward Building  
733 5<sup>th</sup> St., NW, Suite 700  
Washington, D.C. 20005**

**Mr. Ronan P. Doherty  
Mr. Jeffrey O. Bramlett  
Bondurant, Mixon & Elmore, LLP  
3900 One Atlantic Center  
1201 West Peachtree St., N.W.  
Atlanta, Georgia 30309**

**Re: Evelyn L. Johnson's Request for Hearing**

**Dear Ms. Johnson and Mssrs. Doherty and Bramlett:**

**This will confirm that the hearing in the above-styled matter has been rescheduled for Thursday, September 25, 2003 at 9:30 a.m. If necessary, the hearing may carry over into Friday, September 26. The hearing will be held in Courtroom #2 on the 16<sup>th</sup> Floor of the Richard Russell Federal Building, 75 Spring St., S.W., Atlanta, Georgia 30303.**

**A status conference will be held in this case on August 13, 2003 at 10:00 a.m., with all parties participating**

## APPENDIX — 9-B

by telephone. The parties should follow the same procedure for the call that was used this morning (i.e., having all parties on the line before contacting the Court). Prior to August 13, the parties should meet to discuss the framework for the hearing.

Very truly yours,

/s/ Gerrilyn G. Brill

GERRILYN G. BRILL

UNITED STATES MAGISTRATE JUDGE

APPENDIX 10-B

UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT  
STAFF ATTORNEYS' OFFICE  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303-2289

July 10, 2003

VIA U.S. MAIL

Ms. Evelyn Johnson  
6241 S. Skyline Drive  
Douglasville, Georgia 30135

Dear Ms. Johnson:

On June 20, 2003, I informed you of my intention to terminate you from employment with the Staff Attorneys' Office to be effective June 27, 2003. Thereafter, at the request of Chief Judge Edmondson and on my telephone instructions (due to my absence from Atlanta in Florida because of the death of my brother), Mori Irvine wrote to you and your then attorney, Wayne Marcus Scriven, on July 1, 2003, informing you that at the request of Chief Judge Edmondson, your employment would be extended until July 11, 2003. She also informed you that in order for you to be paid for this additional period of employment you must report to work on Wednesday, July 2, 2003. You have not been at work in this office since June 20, 2003.

On June 26, 2003, your requested Chief Judge Edmondson to conduct a full hearing on the decision to terminate your employment.

In light of your request for a hearing to be conducted under the Court's Adverse Action Policy, I am extending you on the payroll of the Staff Attorneys' Office in a status of leave-without-pay effective July 2, 2003, unless you request that you be placed on annual leave or sick leave (the latter to be accompanied with appropriate medical justification). This status on leave will continue until the adverse action hearing

## APPENDIX 10-B

process has been completed or unless you decide to resign or retire, if eligible; or unless the Chief Judge or the Court otherwise directs.

Requests for annual leave or sick leave may be submitted to Sara Gilibert by you in the usual manner with which you are familiar.

We understand from your previous attorney, Wayne Marcus Scriven, that you are now a resident of the State of Virginia, and hereby request that you provide to us your current mailing address as soon as possible. In the interim, this letter is being mailed to your last known address.

Sincerely,

/s/ Naomi G. Godfrey  
Naomi G. Godfrey  
Senior Staff Attorney

c: The Honorable J.L. Edmondson - Via Fax  
Mattie P. Johnson, Esq. - Via Fax  
& U.S. Mail  
Norman E. Zoller - Via Fax

**APPENDIX 10-B**

**LAW OFFICE OF M. P. JOHNSON**

Attorney at Law  
Woodward Building  
733 15<sup>th</sup> Street, NW, Suite 700  
Washington, D.C. 20005  
Phone (202) 628-3498  
Fax (202) 347-3931

July 2, 2003

**Transmitted by facsimile and regular mail**

Mori Irvine  
Judicial Division Manager  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303-2289

**RE: Evelyn L. Johnson**

Dear Ms. Irvine:

Please be advised that my office represent[s] Ms. Evelyn L. Johnson. Therefore, please direct all further correspondence concerning Ms. Johnson's employment matter to my office at the Law Office of M.P. Johnson, Woodward Building, 733 15<sup>th</sup> Street, NW, Suite 700, Washington, D.C. 20005.

In addition, I am in receipt of your July 1, 2003, letter to Ms. Johnson. It is not clear whether your July 1, 2003, letter is rescinding Ms. Johnson's June 20, 2003, termination, which was effective on June 27, 2003, or is it inviting her to return to work to be terminated again on July 11, 2003. Given, the June 20, 2003, termination devastating impact on Ms. Johnson's emotional and physical health, it is not advisable for her to return to work for ten (10) days to be subjected to a second termination.

Furthermore, I am concerned for Ms. Johnson, whose termination from federal service was effective June 27, 2003,

## APPENDIX 10-B

to enter into non-public areas of a federal building without the signed authorization from the person with the authority to rescind her termination. If you have questions, please do not hesitate to contact me at (202) 628-3498.

Sincerely,

/s/ Mattie P. Johnson, Esq.  
Mattie P. Johnson, Esq.

c: Honorable J.L.E.  
NEZ



APPENDIX 10-B

UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT  
STAFF ATTORNEYS' OFFICE  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303-2289

July 1, 2003

VIA U.S. MAIL

Ms. Evelyn Johnson  
6241 S. Skyline Drive  
Douglasville, Georgia 30135  
Dear Ms. Johnson:

Ms. Godfrey was called away from the office on emergency leave this past Thursday to Florida due to the illness and death (on Saturday) of her brother. In her absence, she asked that I contact you. She advises me that acting on a request from Chief Judge Edmondson, she has extended the time of your employment until July 11, 2003, so that further review of this matter may be undertaken. However, in order for you to be paid for this additional period of employment, you must report to work at the usual time on Wednesday, July 2, 2003.

If you have any questions, please feel free to contact me.

Very truly yours,  
/s/ Mori Irvine  
Mori Irvine  
Judicial Division Manager

c: The Honorable J.L. Edmondson - Via Fax  
Mr. Wayne Marcus Scriven - Via Fax & U.S. Mail  
Mr. Norman E. Zoller - Via Fax

APPENDIX 10-B

UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT  
STAFF ATTORNEYS' OFFICE  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303-2289

June 20, 2003

VIA U.S. MAIL  
Ms. Evelyn Johnson  
6241 S. Skyline Drive  
Douglasville, Georgia 30135

Dear Ms. Johnson:

I write to inform you that you that you are terminated from the Staff Attorneys' Office. This action has become necessary because of your insubordinate behavior, unsatisfactory work, and inappropriate conduct in the discharge of your responsibilities. I am mindful of your years of service to the court and this office and I take this action only after extremely careful consideration and due reflection. This decision is based on the recommendation of your immediate supervisor, the reports of others, and my personal observations of your conduct and performance.

Although you have been given every consideration, your work performance over the last year has been unacceptable. Since January 21, 2002, when Sara Gilibert began work in the office and became your immediate supervisor, your performance has been unsatisfactory and continues to decline. She has repeatedly advised you to correct your performance deficiencies and tried to enlist your support in performing the personnel duties of the office. Despite Ms. Gilibert's best efforts, your continued failure to follow her directives, your insubordination to her, your failure to satisfactorily to [sic] perform your assigned duties, and your refusal to communicate with her and other

## APPENDIX 10-B

administrative staff have resulted in inefficient operations in this office. You have been repeatedly counseled, admonished, and warned that such conduct will not be tolerated and will result in disciplinary action if not corrected. Yet, you continue to fail to carry out your assignments and responsibilities or to work with Sara Gilibert in a satisfactory manner.

Because of these continuous unacceptable actions and behavior, you will no longer be accorded the privilege to work for the court and this office. The situation has become one that this office institutionally will not tolerate. Accordingly, and as a result of your unacceptable performance, you are hereby terminated from your position with the Staff Attorneys' Office. This termination will be effective June 27, 2003, at the close of business. Under the authority of the Court's Adverse Action Plan and with the Court's approval, I am placing you immediately in a nonduty status with pay through June 27, 2003. As an alternative, I will accept your resignation effective on or before Friday, June 27, 2003, close of business.

Consistent with APPENDIX II of the Personnel Manual, you have the right to make a written request of the chief judge or his designee within 10 calendar days of the date of your receipt of this letter for a hearing. You also have the right to be represented at the hearing, to confront adverse witnesses, and to present evidence and arguments. If this action is vacated as a result of the hearing before the chief judge or his designee, you will be returned to your status prior to the action as if no action has been taken and all documents will be removed from the record.

I regret having to take this action and wish you every success in your future endeavors.

Sincerely,

/s/ Naomi G. Godfrey  
Senior Staff Attorney

## **APPENDIX 10-B**

**20 JUNE 2003**

### **NOTE TO FILE**

1. NAOMI GODFREY SENT ME AN EMAIL (COPY TO MORI IRVINE) STATING, "I NOTICED THAT YOU ARE LEAVING AT 1:30 P.M. TODAY (I HAVE DOCTORS' APPOINTMENTS). PLEASE COME TO MY OFFICE AT NOON TODAY FOR A CONFERENCE." I RESPONDED, "OKAY, I WILL BE THERE."
2. CAME TO NAOMI GODFREY'S OFFICE AT NOON TODAY. MORI IRVINE WAS ALREADY IN HER OFFICE. NAOMI GODFREY SAID, "COME IN SIT DOWN." RIGHT AWAY, NAOMI GODFREY CONCEDED THAT, "WE DECIDED TO TERMINATE YOU EFFECTIVE CLOSE-OF-BUSINESS OF JUNE 27, 2003." NAOMI GODFREY HANDED ME HER MEMO. I READ HER TWO-PAGE MEMO AND ASKED NAOMI GODFREY, "DOES THIS HAVE ANYTHING TO DO WITH MY COMPLAINT?" I LOOKED AT NAOMI GODFREY AND ALSO MORI IRVINE, WHO WAS STONE FACED. NAOMI GODFREY RESPONDED, "NO." MY RESPONSE WAS, "OKAY."
3. NAOMI GODFREY THEN ADDED THAT MY LAST DAY OF WORK WITH THAT OFFICE WAS TODAY, I WAS TO RETURN MY COURT ID AND KEY CARD, AND THAT BRIAN SCHUMACHER WAS TO ESCORT ME OUT OF THE BUILDING. FURTHER, NAOMI GODFREY TOLD ME TO CALL THE OFFICE NEXT WEEK TO SET UP AN APPOINTMENT TO CLEAR MY OFFICE.
4. I STOOD UP AND PROCEEDED TO MY OFFICE, FOLLOWED BY MORI IRVINE. MORI IRVINE STOOD UP IN FRONT OF MY DESK WHILE I REMOVED THE COURT ID AND KEY CARD FROM

## APPENDIX 10-B

### MY CAR-KEY HOLDER.

5. I GATHERED MY PURSE AND UMBRELLA AND PROCEEDED TO LEAVE, ESCORTED BY BRIAN SCHUMACHER INTO THE ELEVATOR TO THE FRONT DOOR OF THE BUILDING, AS IF I AM A CRIMINAL. I LEFT THE BUILDING WITHOUT SAYING ANYTHING TO BRIAN SCHUMACHER.
6. THE EFFECTIVE DATE OF MY TERMINATION, IF I WILL NOT RESIGN WILL BE JUNE 27, 2003. COINCIDENTALLY, THE FINAL COURT ORDERS ON MY COMPLAINT WERE ENTERED APRIL 24, 2003, BUT WERE NOT MAILED TO ME UNTIL APRIL 28, 2003. I RECEIVED THE COURT FINAL ORDERS ON APRIL 29, 2003. THIS TIMING OF 60 DAYS FROM THE TIME I RECEIVED THE TERMINATION LETTER, AMONG OTHER THINGS, COINCIDES WITH THE TIMINGS THROUGHOUT THE STAGES OF THE EDR PROCESS AND MY UPCOMING TERMINATION.
7. I INFERRED THE WHOLE STAGE WAS TO GET RID OF ME, SIXTY DAYS AFTER THE ENTRY OF THE COURT FINAL JUDGMENT DUE TO MY FILING OF THE EDR COMPLAINT. NOW THAT THE WHOLE PROCEEDINGS WERE DISMISSED, IT WAS MUCH EASIER FOR THE SAO TO FIRE ME. ADDITIONALLY, THE COURT WAS EXPERIENCING BUDGET CRUNCH, AND SEVERAL ATTORNEYS ARE UNHAPPY FOR NOT RECEIVING THEIR OVERDUE PROMOTIONS. MY TERMINATION WILL SAVE THE SAO HALF OF MY ANNUAL SALARY WHICH IS \$49,502 (JULY-DECEMBER 2003), AMOUNT THAT THE SAO COULD USE FOR THE ATTORNEYS' OVERDUE PROMOTIONS.

10

NO. 04-3452

Supreme Court, U.S.  
FILED

05-50902 8-10-05

IN THE SUPREME COURT  
OF THE UNITED STATES

In Re: Evelyn L. Johnson,

Petitioner.

ON PETITION  
FOR AN EXTRAORDINARY WRIT  
OF MANDAMUS  
AND/OR  
PROHIBITION  
APPENDIX

30 Aug 2005  
Date

*Evelyn L. Johnson*  
Evelyn L. Johnson  
Pro Se Petitioner  
6241 S. Skyline Drive  
Douglasville, GA 30135  
(770) 489-0343

[VOLUME 2 OF 2]



**NO. 04-3452**  
**INDEX OF APPENDICES**

<b>Description</b>	<b>Judge(s) Author of Paper</b>	<b>No of Pages</b>	<b>Date Filed in Court</b>	<b>Tab</b>
Ltr fr Pet's counsel fr Wash, DC	M. Johnson	1	07/29/03	8
Letter from J. Brill to Pet's counsel in Wash, DC	Brill	2	07/23/03	9
SAO's ltrs to Pet related to 06/20/03 ltr Inv term ltr to Pet	Godfrey M. Johnson Irvine Godfrey	2 2 1 4	07/10/03 07/02/03 07/01/03 06/20/03	10
<b>2002 EDR Complaint</b>				<b>C</b>
Orders from CJ Edmondson affirming MJ King's dec on 2002 EDR complaint (for the jud council)	Edmondso n	6	04/24/03	1
Ltr to N. Godfrey fr Asst. CE	Alexander	2	03/31/03	2
Ltr, Mot, & EDR frm dtd 03/31/03 to V. Alexander re: cont'ng retal actions	Petitioner	25	03/31/03	3

**NO. 04-3452**  
**INDEX OF APPENDICES**

<b>Description</b>	<b>Judge(s) Author of Paper</b>	<b>No of Pages</b>	<b>Date Filed in Court</b>	<b>Tab</b>
Statement & resp from Pet re: Adverse memo fr S. Gilibert to Pet	Petitioner  Gilibert	6  3	03/12/03  03/12/03	4
Second set of Orders fr Ch Edmondson related to 2002 EDR comp w/ ltr dtd 03/17/2003 (revised) First set of Orders fr CJ Edmondson related to 2002 EDR comp w/ ltr dated 03/13/2003	Edmondso n      Edmondso n	5     4	03/12/03     03/12/03	5
Pet's email to Zoller, ov cont'ng harassment via comp, w/o relief fr mgmt	Petitioner	10	03/10/03	6

**NO. 04-3452**  
**INDEX OF APPENDICES**

<b>Description</b>	<b>Judge(s) Author of Paper</b>	<b>No of Pages</b>	<b>Date Filed in Court</b>	<b>Tab</b>
Pet's ltr to Alexander, re: EDR Comp & Cont'ng Retal Actions Statement on suppl mat evid for the Jud council Pet's statemt on cont'ng viol of retal & hostile work environ & email	Petitioner	4	02/06/03	7
	Petitioner	2	01/22/03 12/11/02	
	Petitioner	6	12/06/02 12/06/02	
Magistrate Judge King final decision on 2002 EDR complaint	King	57	11/14/02	8
Pet's Brief filed with U.S. Ct. Of Appeals w/ Fed. Cir.	Petitioner	32	09/09/04	9
Initial filing of the 2002 EDR Comp	Petitioner	10	03/12/02	10

**NO. 04-3452**  
**INDEX OF APPENDICES**

<b>Description</b>	<b>Judge(s) Author of Paper</b>	<b>No of Pages</b>	<b>Date Filed in Court</b>	<b>Tab</b>
Pet's resume & ltr of appl for the Rec Mgr pos open with SAO	Petitioner	10	12/21/01	11
<b>RESPONDENTS' EXHIBITS — D</b>			10/29/03	43
<b>TABLE OF AUTHORITIES, DEFINED — E</b>				11
<b>APPENDIX FILED WITH THE U.S. COURT OF APPEALS FEDERAL CIRCUIT</b>			<b>NO. OF PAGES</b>	<b>F</b>
Excerpts fr the SAO Self-study & history of SAO staff promotions			27	1
AOUSC Model EDR Plan			5	2
Judiciary EEO Program			7	3
Judiciary Fair Employment Practices			1	4
The Nine Laws Covered Under the Model EDR Plan			4	5
Eleventh Circuit U.S. Court of Appeals EDR Plan			6	6
Appendix II, Adverse Personnel Action Policy of the 11 <sup>th</sup> Cir Court of Appeals Personnel Manual			7	7

NO. 04-3452  
INDEX OF APPENDICES

Description	Judge(s) Author of Paper	No of Pages	Date Filed in Court	Tab
Title 5 Admin Personnel CFR §§1.2, 1.3, 212.101, 1201.3, 1201.56; 28 USC §§ 602, 604; 5 USC § 7511(a)(1)(c)			9	8
29 CFR § 1614.106 Federal EEO Sector			1	9
Excerpts from <i>Guide to Judiciary Policies &amp; Procedures</i> , Ch 10, Personnel			5	10
Excerpts from <i>Guide to Judiciary Policies &amp; Procedures</i> , Ch 10, Personnel, FMLA			1	11
<b>MOTION FOR RELIEF ON DAMAGES</b>			<b>NO. OF PAGES</b>	<b>G</b>
Motion for Relief			22	
TSP Actual Earnings Computations			3	1-G
TSP Should Be Earnings Computations			4	2-G
TSP Average Earnings Computations			2	3-G
TSP On-line Calculations			12	4-G
TSP Letter to Petitioner from National Finance Center			4	5-G
Disclosure of Coverage from Blue Cross Blue Shield Health Insurance			2	6-G
1996 Pay Rates of the Court Personnel System (Table 51, Atlanta)			2	796-G
1997 Pay Rates of the Court Personnel System (Table 51, Atlanta)			2	797-G

**NO. 04-3452**  
**INDEX OF APPENDICES**

<b>Description</b>	<b>Judge(s) Author of Paper</b>	<b>No of Pages</b>	<b>Date Filed in Court</b>	<b>Tab</b>
<b>1998 Pay Rates of the Court Personnel System (Table 51, Atlanta)</b>		2		798- G
<b>1999 Pay Rates of the Court Personnel System (Table 51, Atlanta)</b>		2		799- G
<b>2000 Pay Rates of the Court Personnel System (Table 51, Atlanta)</b>		2		700- G
<b>2001 Pay Rates of the Court Personnel System (Table 51, Atlanta)</b>		2		701- G
<b>2002 Pay Rates of the Court Personnel System (Table 51, Atlanta)</b>		2		702- G
<b>2003 Pay Rates of the Court Personnel System (Table 51, Atlanta)</b>		2		703- G
<b>Excerpts Report of Self-study of Staff Attorneys' Office—September 2001</b>		10		8-G
<b>Pay Computations &amp; Comparisons</b>		4		9-G

## APPENDIX — C

[1 — 10]

### NO. OF PAGES

C — 1	6
C — 2	2
C — 3	25
C — 4	9
C — 5	10
C — 6	10
C — 7	12
C — 8	47
C — 9	32
C — 10	10
C — 11	10



**APPENDIX — 1-C**

**UNITED STATES COURT OF APPEALS  
ELEVENTH JUDICIAL CIRCUIT  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303  
404/335-6535**

**Norman E. Zoller  
Circuit Executive**

**April 28, 2003**

**Ms. Naomi Godfrey, Esq.  
Senior Staff Attorney  
United States Court of Appeals  
Eleventh Circuit  
56 Forsyth Street, NW  
Atlanta, GA 30303**

**Ms. Evelyn Johnson  
6241 South Skyline Drive  
Douglasville, GA 30135**

**Re: Complaint of Evelyn Johnson**

**Dear Ms. Godfrey and Ms Johnson:**

**The following orders, each dated April 24, 2003, are enclosed:**

- Order AFFIRMING the November 14, 2002, decision of Magistrate Judge Janet F. King;**
- Order DENYING motions Ms. Johnson filed on or about April 3, 2003.**

**These orders conclude the Judicial Council's consideration of Ms. Johnson's Petition for Review. The Affirming Order is final and not subject to further review.**

**APPENDIX — 1-C**

The council will not consider any further submissions in connection with this Petition.

Best regards,

/s/ Virgil E. Alexander

Virgil E. Alexander

Assistant Circuit Executive

c:   The Honorable J.L. Edmondson  
      The Honorable Janet F. King  
      Mr. Norman E. Zoller  
      Mr. Jeffrey Bramlett, Esq

**APPENDIX — 1-C**

**FOR THE ELEVENTH CIRCUIT**

**JUDICIAL COUNCIL**

**GENERAL ORDER 2003-h**

**IN RE: PETITION FOR REVIEW**

**FILED BY EVELYN JOHNSON**

**EVELYN JOHNSON,**

**Petitioner,**

**v.**

**STAFF ATTORNEY'S OFFICE**

**UNITED STATES COURT OF APPEALS FOR THE**

**ELEVENTH CIRCUIT,**

**Respondent.**

**Before EDMONDSON, - Chief Judge, TJOFLAT,  
ANDERSON, BIRCH, DUBINA, BLACK, CARNES,  
BARKETT, HULL and MARCUS, Circuit Judges and  
ALBRITTON, BOWEN, CLEMON, VANS, FAWSETT,  
GRANDE, SANDS, VINSON, AND ZLOCH, Chief District  
Judges.**

## APPENDIX — 1-C

### ORDER

The members of the Judicial Council have considered the Petition for Review and Amended Petition for Review filed by Evelyn Johnson on 11 December 2002 and 24 January 2003, respectively, under authority of the provisions of the Eleventh Circuit Court of Appeals Employment Dispute Resolution Plan. In accordance with Chapter VIII, Section 1(D) of that Plan, with no Council member having voted to place this matter on the agenda of the next meeting of the Judicial Council, the decision of United States Magistrate Judge Janet F. King, entered on 14 November 2002, is AFFIRMED.

DONE at Atlanta, Georgia, on 24 April 2003.

FOR THE JUDICIAL COUNCIL

/s/ J.L. EDMONDSON  
Chief Judge

**APPENDIX — 1-C**  
**FOR THE ELEVENTH CIRCUIT**  
**JUDICIAL COUNCIL**

**GENERAL ORDER 2003-g**

**IN RE: PETITION FOR REVIEW**  
**FILED BY EVELYN JOHNSON**

**ORDER**

Evelyn Johnson has filed several documents relating to her Petition for Review, including (1) Motion to Accept Material Documents and Consolidate File on Continuing Retaliatory Actions Arising from the Original Title VII Claim of Continuing Disparate Treatment and Intentional Discrimination ("Motion to Consolidate File"), (2) Petition for this Court to Enjoin [sic] Three Other Parties as Other Respondents, construed as a Motion to Amend File, and (3) Motion to Expedite Petition for Review by the Judicial Council. In light of the Judicial Council's disposition of the Petition for Review:

1. The Motion to Consolidate File is DENIED as moot. Moreover, the Council may only consider evidence

## APPENDIX — 1-C

that was part of the record at the time of the pertinent hearing.

2. The Motion to Amend File is DENIED as moot. Moreover, insofar as the motion seeks to add Norman Zoller, George Watson and Sara Gilibert as respondents is prohibited by Chapter VII §7 of the EDR Plan.

3. The Motion to Expedite is DENIED as moot.

It is noted that the allegations in the Motion to Amend File against Ms. Gilibert and Messrs. Zoller and Watson that are allegedly evidenced by the documents that are the subject of the Motion to Consolidate File form the basis of the allegations in the Complaint and Request for Consultation Petitioner filed with the Eleventh Circuit Court of Appeals on or about 3 April 2003. Those allegations are properly considered in proceedings thereunder.

Done at Atlanta, Georgia on 24 April 2003.

FOR THE JUDICIAL COUNCIL

/s/ J. L. EDMONDSON  
Chief Judge

APPENDIX — 2-C

UNITED STATES COURT OF APPEALS  
ELEVENTH JUDICIAL CIRCUIT  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303  
404/335-6535

Norman E. Zoller  
Circuit Executive

April 14, 2003

Naomi Godfrey, Esq.  
Senior Staff Attorney  
United States Court of Appeals  
for the Eleventh Circuit  
56 Forsyth Street, NW,  
Atlanta, GA 30303

Re: Complaint of Evelyn Johnson

Dear Ms. Godfrey:

Enclosed for your records are certain Motions and other papers file by Ms. Johnson on or about April 3, 2003 and which were the subject of my e-mail dated April 10, 2003. You will note that among the papers is a Complaint and Request for Consultation wherein Sara Gilibert of the Staff Attorney's Office, along with Circuit Executive Norman Zoller and George Watson of the Court's Automation Group, are identified persons in a new matter under the EDR Plan. I have forwarded this Complaint to Robert Phelps, the Court's EDR Coordinator, for further processing.

Best regards,

/s/ Virgil E. Alexander



**APPENDIX — 2-C**

**Virgil E. Alexander**  
**Assistant Circuit Executive**

/vea

**Enclosure**

- c: **The Honorable J. L. Edmondson, (w/o encl.)**  
**The Honorable Janet F. King**
- **Mr. Norman E. Zoller**  
**Mr. Jeffrey Bramlett, Esq. (W/o encl.)**  
**Ms. Evelyn Johnson (w/o encl.)**

## APPENDIX 3-C

6241 S. Skyline Drive  
Douglasville, GA 30135

---

31 March 2003

### VIA U.S. MAIL

Virgil Alexander, Assistant Circuit Executive  
Eleventh Circuit United States Court of Appeals  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303-2289

Dear Mr. Alexander:

The Eleventh Circuit Judicial Council issued the March 12, 2003, General Order 2003-E, denying motions, construed as motions to amend/consolidate files, related to the retaliatory actions' claim now pending for review by the Judicial Council. This Order, however, does not preclude me from filing a formal request to bring a new retaliation claim. I, therefore, petition the Court for the following motions:

1. Motion to Consider and Accept Material Documents and Consolidate File on Continuing Retaliatory Actions arising from the original Title VII claim of Continuing Disparate Treatment and Intentional Discrimination, creating intimidation, harassment, and hostile work environment;

2. Petition for this Court to join three other parties, Norman E. Zoller, George Watson, and Sara Gilibert as other respondents, who directly or indirectly participate to engage in retaliatory actions, adversely inferred as attempts to coerce or interfere with the EDR process; and

### APPENDIX 3-C

#### 3. Motion to Expedite Petition for Review by the Judicial Council.

Attached are Exhibit D1 Form, referenced Motions, most recent adverse retaliatory action, Memorandum dated March 12, 2003, signed by Sara Gilibert. Also attached are emails and material evidence, which are construed as continuing retaliatory actions by the primary respondents, and other respondents named herein.

Respectfully submitted,

/s/ Evelyn L. Johnson

Enclosures

c: The Honorable Chief J. Edmondson

APPENDIX — 3-C

COMPLAINT AND CONSULTATION  
(CONFIDENTIAL)

TO: EDR/Alternate EDR Coordinator  
Robert Phelps  
Name

FROM: Evelyn L. Johnson  
[Complainant]

I. A. Address: 6241 S. Skyline Drive  
Douglasville, GA 30135

B. Work Phone: N/A  
Home Phone: 770-489-0343

C. If you are now a court employee, state job title  
and pay classification of your job:

HR Coordinator, CPS CL 26/42

II. A. For a complaint alleging discrimination, check  
and identify as many categories are  
applicable:

☒ Race ☒ Color ☒ National Origin  
☒ Age ☒ Religion  
☒ Gender ☒ Handicap

B(1). Date(s) of alleged discrimination: See  
Attachments

Continuing retaliatory actions arising from the original  
Title VII claim of continuing disparate treatment and  
intentional discrimination, creating intimidation,  
harassment, and hostile work environment.

B(2). Please identify by name and position the  
official(s) you believe discriminated against you:

Norman Zoller, Circuit Executive; George Watson, Court  
Automation Employee; Sara Gilibert, SAO Manager for  
Recruiting

III. A. For all types of matters complained of

## APPENDIX — 3-C

(including complaints of discrimination), please briefly summarize the events or occurrences giving rise to your complaint, and how you believe you were improperly treated or treated differently from other employees or applicants. You should also specify here the portion (section) of the Employment Dispute Resolution Plan which specifies the right(s) you believe may have been violated:

Please see attachments

[you may attach up to one additional page  
as to this item, if necessary]

B. Corrective action sought by you:

Attached.

C. Do you have an attorney or other person to represent you? ☐ Yes ☒ No

If yes, name and address of attorney or representative:

/s/ Evelyn L. Johnson

Signature

31 March 2003

Date

# APPENDIX — 3-C

## ATTACHMENT A

OUTLINE		
CONTENTS		TAB
Letter requesting formal counseling on Continuing Retaliatory Actions, Petition for this Court to join three (3) other parties as other respondents, and Motion to Expedite Petition for Review by the Judicial Council		A
Court General Order 2003-E dated March 12, 2003		B
Exhibit D1 Form		C
Motions		D
(1)	Motion to Consider and Accept Material Documents to Amend File on Continuing Retaliatory Actions arising from the original Title VII Claim of Continuing Disparate Treatment and Intentional Discrimination	D
(2)	Petition for this Court to join three other parties, Norman E. Zoller, George Watson, and Sara Gilibert as other respondents, who directly or indirectly participate to engage in retaliatory actions, adversely inferred as attempts to coerce or interfere with the EDR process; and	D
Norman E. Zoller, Circuit Executive, Respondent	(a)	

# APPENDIX — 3-C

CONTENTS		TAB
George Watson, Court Automation Employee, Respondent	(b)	
Sara Gilibert, SAO Manager for Recruiting, Professional Development, and Training, Respondent	(c)	
(3) Motion to Expedite Petition for Review by the Judicial Council.		D
<b>Attachments to Motions</b>		<b>E</b>
(1) Memorandum dated March 12, 2003, from Sara Gilibert to Petitioner, Referral to Employee Assistance Program (EAP)		<b>E</b>
(2) Email to Norman E. Zoller dated March 10 & 17, 2003		<b>E</b>
(3) Email to Norman E. Zoller dated March 6 & 7, 2003; February 24 & 25 2003		<b>E</b>
(4) Adverse inference letter dated February 8, 2003 - Response to Respondent's counsel's letters dated February 3 & 7, 2003; Response to Virgil Alexander's letter dated February 6, 2003		<b>E</b>
(5) Letter dated February 6, 2003 - Response to Respondent's memos, including three (3) attachments, construed as retaliatory action and requested appropriate immediate action to intervene with conflict		<b>E</b>
(6) Adverse inference letter dated February 1, 2003		<b>E</b>



# APPENDIX — 3-C

(7)	Email from Sara Gilibert dated December 6, 2002, and Statement on Continuing Violation of Retaliation and Hostile Work Environment (same date)	<b>E</b>
(8)	Addendum to Response to Sara Gilibert's Email dated December 10, 2002	<b>E</b>
(9)	Email from Sara Gilibert dated October 8, 2002	<b>E</b>
(10)	Statement and seven-page attachments on computer monitoring	<b>F</b>
<b>Corrective Action</b>		<b>F</b>

**APPENDIX — 3-C**

**PETITION FOR REVIEW**

**BY THE ELEVENTH CIRCUIT**

**JUDICIAL COUNCIL**

**IN RE: EVELYN JOHNSON, PETITIONER**

---

**MOTION TO CONSIDER AND ACCEPT  
MATERIAL DOCUMENTS AND  
CONSOLIDATE FILE ON CONTINUING  
RETALIATORY ACTIONS ARISING FROM  
THE ORIGINAL TITLE VII CLAIM  
OF CONTINUING DISPARATE TREATMENT  
AND INTENTIONAL DISCRIMINATION**

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The ten (10) attachments to Motions are submitted for the Court's consideration as material evidence of continuing retaliatory conduct and actions, related to the referenced complaint now before the Judicial Council for Review.<sup>1</sup>

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<sup>1</sup> Attachments to Motions, TAB E

**APPENDIX — 3-C**

**PETITION FOR REVIEW**

**BY THE ELEVENTH CIRCUIT**

**JUDICIAL COUNCIL**

**IN RE: EVELYN JOHNSON, PETITIONER**

---

**PETITION FOR THIS COURT  
TO JOIN THREE (3) OTHER PARTIES  
AS OTHER RESPONDENTS**

---

Chapter VII, § 2A, General Provisions and Protections of the EDR Plan states in part:

**Prohibition against retaliation.** The Court, any Court unit executive or their assistants, shall not retaliate against, coerce, or interfere with a complainant or anyone participating in the filing and processing of a complaint.

**1. Norman E. Zoller, Circuit Executive (CE), Primary Respondent's Supervisor, Respondent**

**a. Written notification to the CE.** Although notified and made aware of the respondents' continued workplace hostility through intimidation by computer, harassment, deliberate, malicious, inappropriate and illegal behavior, construed as continued retaliatory actions during the pendency of the complaint, the CE failed to restrain the respondents from interfering and effectuate the continuing affirmative application and enforcement of the EDR process.

29 CFR § 1609.1(b)(1)(i) defines harassment that "has the purpose or effect of creating an intimidating, hostile, or

## APPENDIX — 3-C

offensive work environment.”

“An employer is liable for its conduct and that of its agents and supervisory employees with respect to workplace harassment on the basis of race, color, religion, gender, national origin, age, or disability. Regardless of whether the employer knew or should have known of the conduct where the harassing supervisory employee is acting in an ‘agency capacity.’”

29 CFR § 1609.2(2).

**b. Email dated March 7, 2003,** referenced the ongoing computer problems, being singled-out for computer monitoring to intimidate, harass, and demoralize me daily. The CE's response to my email was indicative that he is aware, and has the knowledge of, the computer monitoring since he never denied my allegations. As a result, the referenced memo dated March 12, 2003, was precipitated as another retaliatory action due to the CE's implied action (or inaction), which I adversely inferred, that it is all right for the respondents to continue to engage in inappropriate, retaliatory, and illegal actions and behavior. <sup>2</sup>

**c. Court Computer Banner: “Warning: This system is for use by authorized users only.”**

This system and all network and Internet activities are monitored to protect against unauthorized use and for maintenance purposes. In the course of such monitoring, the activities of authorized users may be monitored and/or recorded by systems personnel. Anyone accessing and using this system expressly consents to system

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<sup>2</sup> Attachments 1 & 3, Tab E

## APPENDIX — 3-C

monitoring. If monitoring reveals evidence of unauthorized use or criminal activity (emphasis), systems personnel may provide such evidence to the court and to law enforcement officials.

While I understand the express intent of the computer banner and any public or private workplaces could subject any employee to such monitoring, the point being is that I am being singled-out to be subjected to such monitoring, which I adversely inferred a retaliatory action due to the EDR complaint pending before this Court. Furthermore, as a permanent employee of this office, I am an authorized user of the computer. "If monitoring reveals evidence of unauthorized use or criminal activity," and since I am an authorized user of the computer and was never accused of any criminal activity, being singled-out in the computer monitoring is adversely inferred as a retaliatory action.

Court regulations specified in the Automation Computer Security and Automation Users Guide (3/15/02) state in part:

### Network Accounts and User Access

"Each Court employee will be provided a network account that will be protected from use by others (usually the F: drive)."

### Monitoring Network Security

"The Network team is prohibited from accessing or viewing any user files or data without the user's authorization."

"As for all other court employees, access to a user's desktop computer (including material on the local drive (emphasis)) and access to a user's network account may be provided to a unit head or other court official, with approval of the Chief Judge, when access is necessary

## APPENDIX — 3-C

for a legitimate business purpose or during the course of an investigation of any alleged illegal or improper activity."

### Automation Staff Responsibilities:

"Monitor court systems for unauthorized access and any other abuses. Such monitoring may result in the acquisition, recording and analysis of data being communicated, transmitted, processed or stored on the assigned system by staff members."

### User Responsibilities:

"If more than one individual is using a personal computer, the supervisor is responsible for the system."

"Users are responsible for actions taken under their network login."

### **d. Invoke protection of the Fourth Amendment.**

The computer harassment has not stopped. It continues to this day. Work I have done, specifically in Excel, updated personnel and payroll information, saved and file was printed, but file could not be located.

Although I am not a computer expert, I believe, and am certain, when someone intentionally tampers with my computer, specially when I am the only one in the SAO who continually had problems with the computer, which started after the filing of the instant complaint. Since my computer has been reconfigured and as shown by the attached notes on how my computer setting was set (I have checked other employees' computers and I was certain their computers are not set like mine), I believe my computer is linked to a host computer, permitting transfer of data across office lines, which runs through Intranet connection and saves a temporary file on C:\Drive. The file then saved on the



## APPENDIX — 3-C

F:\Drive (Court's local network which is connected to DCN), but creates problems with my computer in retrieving documents and converting other files or forms directly connected to the Data Communications Network (DCN), the Judiciary Nationwide Network.

While I reported the security breach to the computer administrators, I am again censured.<sup>3</sup> Furthermore, due to my allegations of computer surveillance, I am looked upon as having "personal problems," and have been accused by automation employee of having "paranoia" when I asked for assistance to fix my computer, and imply that I may be the one who creates all the problems with my computer.<sup>4</sup>

The Fourth Amendment says: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause."

Because I am being singled-out in the computer monitoring, and because the Fourth Amendment protects "people" rather than "places," [t]he Amendment protects individual privacy against certain kinds of governmental intrusion . . . and often have nothing to do with privacy at all. . . . Other provisions of the Constitution protect personal privacy from other forms of invasion. . . . But the protection of a person's general right to privacy—his right to be let alone by other people, and wherever an individual may harbor a reasonable 'expectation of privacy,' he is entitled to be free from unreasonable government intrusion." Katz v. United States, 389 U.S. 347, 351, 361 (1967) (citations omitted).

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<sup>3</sup> Attachment 3, TAB E

<sup>4</sup> Attachment 1, TAB E



## APPENDIX — 3-C

**e. Failure to provide a copy of the evidentiary hearing transcript until a direct order from the Chief Judge of this Court was issued, construed as retaliatory action and attempts to coerce or interfere and prolong the pendency of the process, is harmful error because it deprives me of the opportunity to present specific arguments on appeal regarding the presiding judge's decision. Upon my request to receive a copy of the transcript, I was informed by the court reporter that the presiding judge expressly stated that, "I defer that decision with the Circuit Executive," and ignoring my formal request of such a document is adversely inferred as attempts to interfere with the process.**

**f. Timing, untimely submission of the respondents' file and statements on my letters, which I reasonably inferred as attempts to interfere with the EDR process.**<sup>5</sup>

29 C.F.R. §1613.261 prohibits the agency from restraining and/or interfering with the EEO process. The agency has a continuing duty to promote the full realization of equal employment opportunity in its policies and practices. 29 C.F.R. § 1613.202. This duty extends to every aspect of agency personnel policy and practice in the employment, advancement, and treatment of employees. 29 C.F.R. § 1613.203. Agencies shall, among other things, insure that managers and supervisors perform in such a manner to effectuate continuing affirmative application and vigorous enforcement of the policy of equal opportunity. 29 C.F.R. § 1613.203(g). Respondents' attitude and blatant disregard for their duty to comply with the anti-discrimination law are indicative of retaliatory motive.

**2. George Watson, Court automation employee, Respondent**

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<sup>5</sup> Attachments 4, 5, & 6, TAB E

## APPENDIX — 3-C

a. George Watson, the automation employee who, although continually denied, I believe, is the employee who assisted the primary respondents to carry out computer harassment and intimidation.

b. George Watson's actions, indirect statements regarding my allegations of computer monitoring led me to believe that he is the employee assisting the respondents.

c. On February 13, 2003, the day prior to my week of absence, George Watson attested that Jim Smith sent him to the SAO to reconfigure my computer, and to insure that nobody will be able to access my computer without my express permission. Although the office was not warm by any means, George Watson was sweating profusely, was very nervous as he sat in my chair and began loading the computer software in my computer. As I watched George Watson reconfigure the setting of my computer, he conceded that, "I know you don't trust/like me, but Jim Smith told me to set your computer where nobody could access your computer, even Karen Sinyard or Jim Smith." George Watson also said that, "I will remove the 'sharing' function of the computer," as I watched him adjust the setting and how he reset the computer.

When I returned to work on February 24, 2003, I could not even access my computer and asked George Watson once again, I was having computer problems just logging in. My suspicion of computer tampering again surfaced. I checked the computer setting, and again it was set the way it was, prior to George Watson's setting on February 13, 2003. I was actually fed up at this point when George Watson came to my office, denied he did not know why my computer was set that way, and why I am having problems printing documents again. Although I used the term "suspicion" of computer tampering, I was most certain that someone was doing this action to intimidate, aggravate, and harass me. When the CE did not deny my allegations of being singled-out and harassed through a computer, I could

## APPENDIX — 3-C

only adversely infer that those allegations and suspicions were true.

### **3. Sara Gilibert, SAO Manager for Recruiting, Professional Development, and Training, Respondent**

**a. Memo dated March 12, 2003, Supervisor's EAP Referral for Counseling, Sara Gilibert, SAO Manager for Recruiting, Professional Development and Training. (See App. 4-C).**

Section 9 of the Court Personnel Manual, Employee Assistance and Wellness Programs state in part:

This support includes counseling, consultations, wellness training, and critical incident stress intervention, and is designed to help employees with personal problems (emphasis), including alcohol and other substance abuse.

Further, Court regulations governing § 9, Statement of Concern of the Court EAP clearly stated, "The EAP has been established in response to the need of helping employees with personal problems."

The referenced memo, construed as another retaliatory action, is aimed to circumvent and manipulate the situation, divert work-related issues, and distort factual representations of work-related issues to those of "personal problems." Although the complaint is before the Judicial Council for review, the respondents' failures to produce an adverse employment record and the adverse statements contained in the memo, are attempts to malign, discredit my credibility, and slander the dignity and integrity of my reputation since I understand the realities of life, and I manage to deal and cope with work and personal issues separately. Under § 9.02.00 of the Court EAP rules, "The EAP deals with many problems employees may encounter, including but not limited to, marital and family problems,

## APPENDIX — 3-C

separately. Under § 9.02.00 of the Court EAP rules, "The EAP deals with many problems employees may encounter, including but not limited to, marital and family problems, stress, anxiety, financial troubles, and alcohol or other substance abuse (emphasis)."

After briefly discussing the content of the memo with Sara Gilibert, before she left my office, and prior to reviewing the Court procedures for employee referrals to the EAP, I was forced to agree to attend the EAP counseling. I made an appointment with the EAP counselor on March 18, 2003, at 9:00 a.m. although I specifically told the counselor that I do not have a personality conflict (or personal problems that altered my personality, mood, or behavior) with Sara Gilibert. After revisiting the personnel manual, I cancelled my appointment with the EAP counselor.

Section 9.04.00(b), procedures for supervisor's referral to EAP states that, "Supervisors may refer employees to the EAP counseling when work performance or conduct has been adversely affected by a personal problem (emphasis). Supervisors are encouraged to refer such employees to the EAP before taking adverse action(s) against them."

The respondents' blatant disrespect and actions to dishonor the EDR process and this Court, failure to validate the legitimacy, severity, totality of the alleged adverse employment claims and undisputed facts of the complaint, specifically, when I recognized the ulterior motive and intent of the memo and for them to continue to engage in such abusive actions is incomprehensible to me.

**b. December 11, 2002, Letter to Virgil Alexander, including attachments <sup>6</sup>**

**c. October 8, 2002, email from Sara Gilibert and my email response <sup>7</sup>**

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<sup>6</sup> Attachments 7 & 8, TAB E

<sup>7</sup> Attachment 9, TAB E

## APPENDIX — 3-C

### F. Corrective Action

The Administrative Procedure Act authorizes courts to compel or set aside an agency action on a finding that the action was arbitrary and capricious, an abuse of discretion or otherwise not in accordance with the law. 5 U.S.C. § 706(2). The reviewing Court may also take such action if the agency violated the Constitution, exceeded its statutory authority, or failed to observe required procedures. Id.

This Court in Shields v. Fort James Corp., adopting the Supreme Court's decision in National Railroad Passenger Corp. v. Morgan on claims of retaliation and hostile work environment brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., held that "a hostile work environment should be reviewed in its entirety, so long as one of the events comprising it falls within the statute of limitations period. An allegation that an employer has allowed a racially hostile work environment to prosper embodies a single violation of an employee's right to 'enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship' and, therefore, should be reviewed in its entirety." National Railroad Passenger Corp. v. Morgan, \_\_\_, U.S. \_\_\_, 122 S.Ct. 2061, 153 L.Ed.2d 106 (2002).

**APPENDIX — 3-C**

**PETITION FOR REVIEW**

**BY THE ELEVENTH CIRCUIT**

**JUDICIAL COUNCIL**

**IN RE: EVELYN JOHNSON, PETITIONER**

---

**MOTION TO EXPEDITE  
PETITION FOR REVIEW BY THE JUDICIAL  
COUNCIL**

---

Petitioner moves the Court to Expedite for good cause shown, resistant retaliatory behavior and continuing retaliatory actions of the Respondents, and issues of fact remain undisputed, to reject the decision of the appointed judicial officer because her factual determinations were not supported by substantial evidence, and in doing so, find in favor of the Petitioner of intentional discrimination. The correct inquiry has been proven by a preponderance of the evidence that Petitioner has been, and still is, a victim of a continuing disparate treatment and intentional discrimination.



## **APPENDIX — 3-C**

to alter employment practice or policy denying job/promotion opportunities to individuals on the basis of race, sex, age religion, national origin, and discrimination in pay against ethnic Asian minorities, and the falsity of the respondents proffered defense clearly established the requisite proof of discrimination.

To insure the integrity of the process, claims of retaliation arising from the original Title VII claim, malicious intent strongly infers retaliatory motivation on continuing basis, as supported by material evidence related to the complaint and submitted to the Court. It is the duty of the Court having jurisdiction over proceedings to cause such claim to be in every way expedited, and enter a finding of discrimination and order relief, with both the letter and spirit of the order.



**APPENDIX — 3-C**

**BY THE ELEVENTH CIRCUIT**

**JUDICIAL COUNCIL**

**IN RE: EVELYN JOHNSON, PETITIONER**

**STATEMENT RELATED TO THE FOUR-PAGE  
ATTACHMENTS ON COMPUTER MONITORING**

While the Respondents vehemently and continually deny computer monitoring in light of the numerous computer problems I encountered after the filing of the complaint, the attached notes were copied from the computer prompts after encountering the problems.

These notes were the most recent notes compiled and to substantiate allegations of computer tampering and manipulation of my workstation PC settings.

## APPENDIX — 3-C

### WORK-UNIT PC SETTINGS

December 10, 2002

Netware Security

Computer prompt after login and tried to access Lotus Notes

Computer Login Information

Evelyn is logged into NDS Tree CA11

ascn=johnson.ou=StaffAtty.ou=Atlanta.o=CA11

New user is logged in as SA-1208/johnson

Prompt

"Use the Task List to close an application that is not responding."

"Lock Workstation Logout Shutdown

Login date: January 15, 2003

All Netware Login Information same information from January 14, 2003

BUT with additional prompt:

"This workstation is in use and has been locked."

"This workstation can only be unlocked by a logged in user or a system administrator."

-CA11. . .

-StaffAtty.Atlanta.CA11

-StaffAtty

My Computer

Users and Password Control Panel

"You must be a member of the Administrators group on this computer."

"You are logged in as SA-1208/Johnson which is not a member of the administrators group. Specify the user

## APPENDIX — 3-C

March 3, 2003

Converting AO Personnel Form to Word Perfect on the

JNET, a window (box) appeared and indicated:

"This document (C:\Documents and Settings\newuser\Local Settings\Temporary Internet Files\Content.IE5\QLATFPWC\AO78a[1]) is in use or specified as read-only. You may edit the document, but you must save it with a new name."  
"Continue?" "Yes" "No"

March 20, 2003

Banner after Login Results

Your current context is StaffAtty.Atlanta.CA11

User: Johnson Context:: StaffAtty.Atlanta.CA11

You are attached to server CA11-ATL-4

LOGIN-LGNWNT32.DLL-740: This utility could not execute external program \*\*\*\*DATA

Authenticating to server DATA-SVR.

Default File Location:

C:\Documents and Settings\newuser\My Documents

User\_Name: Eleventh Circuit

23 of 25

### CONTINUATION FROM ABOVE

Local Disk (owned by administrators)

Local Disk (D:) — Local Disk

Compact Disc Compact Disk (E:)

CMS on 'CA11-CMS' (R:)

Network Drive

Other

Computers CA11-SA-1211

CA11-SAO-32016

Comment CA11-StaffAtty

Workgroup

ATTACHMENT E(1)

## APPENDIX — 3-C

March 21, 2003

After Login - Computer prompts:

Your current context is StaffAtty.Atlanta.CA11

User: Johnson Context: StaffAtty.Atlanta.CA11

Your current tree is CA11

You are attached to server CA11-ATL-4

Authenticating to server DATA-SVR

Q=156.130.16.26

LOGIN-LGNWNT32.DLL-890: The specified server is unknown.

Johnson on 'Data-svr\Data\Home\SAO' (F:)

March 25, 2003      Called Ken Hudson

Cannot locate any files

F:\ drive missing (see "My Computer" entry dated 3/24/03 on Drives)

Ken Hudson came and reinstalled my F:\Drive

March 26, 2003 Called Ken Hudson

Personnel Forms on the JNET would not pull up

Ken Hudson came and made some computer adjustment on the setting

## APPENDIX — 3-C

March 24, 2003

### Default

User: ALL - Newuser  
(Administrators/Johnson)  
System

Security: All Users (Access Control Settings)  
Administrators (CA11-SAO-  
32016\Administrators)  
Everyone  
Power Users (CA11-SAO-32016\Power  
Users)  
System Users (CA11-SAO-32016\Users)

Permissions: Allow-----

When trying to locate files/documents by clicking on an icon on the desktop, computer prompts:

"This document (C:\Program Files\Microsoft Office\Office\Excel.EXE) is in use or is specified as read only. You may edit the document but you must save it with a new name." "Continue?" "YES" "NO"

✓ Yes, computer prompts: "Unsupported document"

-----  
Temporary Files that were created and saved (work I did) and try to delete:

Computer prompts:

"Cannot be deleted. There has been a sharing violation." "The source or destination file may be in use."

## **APPENDIX 4-C**

### **STATEMENT OF POSITION ATTACHMENT TO MEMO DATED MARCH 12, 2003**

This is in response to the attached 11-point adverse statements contained in memorandum dated March 12, 2003, which was handed to me by my present immediate supervisor, Sara Gilibert. This memo contained repeated specific issues directed to me in the past year as a result of what I construe as retaliatory action. I would briefly address the statements in the order in which it corresponds to each paragraph.

¶ 1 - States concern on my conduct, work performance, referral to the Employer Assistance Program (EAP), and the memo is not a disciplinary action but will be placed on my local personnel file.

As Sara Gilibert and I discussed the content of the referenced memo on March 12, 2003, for less than ten minutes, I construe the memo as another continuing retaliatory action since I filed the EEO complaint against the SAO.

¶ 2 - Prior to Sara Gilibert's employment with the SAO, which was effective January 21, 2002, my immediate and second lines of supervision were the original respondents to the complaint. I worked with/for them from the time I started work with the SAO. While I believe my present supervisor take my "conduct and work performance" in the most unfavorable way after the filing of the EEO complaint, she has no basis of my true character, professional demeanor, work ethics, and overall performance throughout my tenure with the SAO.

The statement "continued display of outward resentments toward being supervised, to blatantly refuse or fail to comply with appropriate instructions, continue to carry out duties with indifference and hostility, improving work and attendance related deficiencies have been met with



## APPENDIX 4-C

anger and resentment," carries serious, negative accusatory allegations on my work ethics, overall work performance, and professional demeanor without substantial foundation. While Sara Gilibert and I discussed those issues before, I was never hostile with anyone in the SAO, while I continued to perform mundane duties, without disrupting the operation of the SAO.

Work attendance related deficiencies were major issues I faced last year, due to the psychological and emotional trauma, both personal and work related issues. Those issues, although well established and discussed, my mother's sudden illness and eventual death, the work related EEO complaint, the respondents' retaliatory actions, work attendance has never been an issue this year. Other than scheduled doctors' appointments and scheduled annual leave, I have been mindful of my work attendance, although it has been extremely difficult to come to work and to deal with my work environment. To my knowledge, however, support staffs who continually call in sick every time they accrued sick leave to cover their absences, specifically Belinda Hunte and Jackie Williams, both female African Americans, their work attendance has not been an issue. Additionally, while mundane duties I do now affected promotion potential if I were to seek and continue federal employment elsewhere, I continued to work without complaint, while other support staffs (although recently promoted) continued to complain about their dissatisfaction to doing those tasks assigned to them.

¶ 3 - Computer password issue. Although the management maintains the necessity of disclosing a computer password, "as in the case of every other employee," I never had any problem of disclosing a computer password prior to the filing of the instant complaint. When I felt certain that I am being singled-out, intimidated and harassed by tampering with my computer, continued to experience computer problems while hard/local drives were replaced three times, I feel completely demoralized to be



#### APPENDIX 4-C

subjected to daily retaliatory action and abuse of this office. Disclosure of a computer password to the Administrative Manager is irrelevant since the respondents can access my computer readily any time.

Although the banner on each government-owned computer is displayed on each employees' work station, the automation employees expressly told me, including George Watson, that employees are not subjected to computer surveillance. George Watson knowingly attested to me on February 13, 2003, when he was sent over by Jim Smith to reconfigure my present hard drive that, "Judges do not permit that kind of thing here. That is the best thing to do to get us fired." That was the day prior to my scheduled annual leave and did not return to work until February 24, 2003.<sup>1</sup>

As shown on my email to the Circuit Executive my frustrations I experience daily at work regarding my computer, the Circuit Executive's response, in light of the circumstances I face, was an adverse action against me since he never denied my allegations of computer surveillance by the respondents. The CE's action, as I adversely inferred, gave rise to the referenced memo, that it was all right for the respondents to continue the illegal activity I am subjected daily. Furthermore, I construe the CE's action as in clear violation of the anti-retaliatory actions under Chapter VII § 2 of the EDR Plan. When I asked Sara Gilibert what precipitated the memo, she did not give me a direct answer, but I knew it was because of the email I sent the CE and copied the recipients, including the Chief Judge of this Court. Sara Gilibert, however, conceded that it was "disrespectful for you to send that email to the Circuit Executive and copy the Chief Judge." While I believe that the primary respondent has not divulged the totality, severity, and magnitude of my employment allegations against this office

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<sup>1</sup> Attachment 1 & 3, TAB E

## APPENDIX 4-C

to Sara Gilibert, the issuance of the memo was directed by the primary respondent.

I find the statement "many files stored on [my] computer are placed or reside there, notices, forms, and other personnel related documents so that the Administrative Manager may access office files stored on government-issued computer, and continued refusal to supply [my] password creates inefficiencies, unneeded duplication and unsatisfactory work," extremely incredible.

As stated above, if the Administrative Manager needs (if she has any need) to access my computer for any reason, she can freely access my computer without giving her my password. Furthermore, personnel related documents, official forms, and notices the management claims being sent to me by AO, and other personnel-related documents sent to me by others were unfounded. I never receive on a regular basis official related documents from the AO since I have never been listed as a recipient on official personnel matters originated from the AO. Other than occasional emails from the AO concerning personnel actions originated from this office that I processed, there were only three months (March - June 2002) that I received employees' payroll information. I could only infer that the other respondent added me to the approved list of recipients of official notices from the AO, when I initiated the EEO complaint, but then I stopped receiving those payroll information in July 2002. Personnel forms are accessible to anyone on the JNET. It is seldom that I receive emails from the AO, and my interaction with the AO is usually conducted by phone on questions or concerns on personnel paperwork.

As I deal with the respondents' resistant behavior to comply with the anti-discrimination law, the only probable need the respondents have to access my computer is to alter documents and files to be used against me since I am the designated user of the computer.

## APPENDIX 4-C

¶ 4 - See Attachment E (5)

¶ 5 - Allegations of failing to communicate with Sara Gilibert and other administrative staff so as to minimize or reduce errors, instructing me to contact other administrative staff whom I had refused to communicate were untrue. I was instructed to call Nancy Burnham during that time we were working on the FEPPS (formerly EEO Report), but never did I refuse to communicate with Nancy Burnham.

¶ 6 - Addressed in complaint generally

¶ 7 - The only occasion I admit being hostile was my reaction to George Watson's blatant dishonesty, and deceit after he told me prior to taking leave that nobody will be able to access my computer, including himself. The only way it could be accessed is to use my workstation to make changes to my computer. While I was gone, I was certain that someone accessed my computer, as evidenced by my email to Jim Smith.<sup>2</sup>

¶ 8 - Vague reports that "other staff, based on [my] hostile and belligerent attitude, would prefer not to deal with [me]," are character attacks which are categorically unfounded. If true, I had been reprimanded for that kind of behavior, and furthermore, who are those staff who made the reports. Employees in this office could attest to my character and attitude, in light of all the respondents' abuse I am subjected daily.

"Suspicious and angry demeanor" could only come from George Watson. I could honestly say that I was frustrated and visibly upset with George Watson for his dishonesty when I discovered that my computer is being monitored once again upon my return to work after taking some time off.

---

<sup>2</sup> Attachment 3, TAB E

## APPENDIX 4-C

While I believe the referenced memo was directed by the primary respondent, threats of disciplinary action, my "most recent behavior and claims of computer surveillance and conspiracy especially disturbing," and referral to the EAP on "personal" problems, "sending email to the Circuit Executive and copying it to the Chief Judge is disrespectful," I clearly infer this adverse statement coming from the primary respondent to manipulate the situation, as a result of the email I sent the Circuit Executive and his response to me. <sup>3</sup>

¶ 9, 10, & 11 - While I have not discussed with Sara Gilibert the extent and magnitude of adverse employment issues in my complaint, I believe it is the respondents' responsibility to inform Sara Gilibert since Sara Gilibert signs the retaliatory memos addressed to me. It is quite disconcerting to me that Sara Gilibert, as a manager who is over human resources unit of this office, should know the consequence of her actions, while she continues to engage with those prohibited actions. She is aware that I had filed an EDR/EEO complaint. I informed her that I construe those memos as retaliatory actions, while I am exercising my rights and protecting my vested federal employment interests.

"I find some of your most recent behavior and your claims of computer surveillance and conspiracy especially disturbing, and I want to be sure you have the opportunity to use all of the assistance available to you." While this statement implies strong, serious allegations of an unstable individual, this paragraph also characterizes underlying motives and intent to manipulate the situation and make it seem that due to "personal problems," respondents' allegations of behavioral and performance problems, they invented a fictitious persona to make a case and to threaten me of disciplinary action. The description of character inflicted in me has never been remotely associated with my personality, and to characterize me as the same person they described is preposterous.

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<sup>3</sup> Attachments 1, & 3, TAB E

**APPENDIX 4-C**

**UNITED STATES COURT OF APPEALS**

**ELEVENTH CIRCUIT**

**STAFF ATTORNEYS' OFFICE**

---

**MEMORANDUM**

**DATE:** March 12, 2003  
**TO:** Evelyn Johnson  
**FROM:** Sara Gilibert  
**SUBJECT:** Referral to Employee Assistance Program

The purpose of this memorandum is to follow-up on our previous discussions regarding my concern about your conduct and work performance and to recommend a referral to the Employment Assistance Program ("EAP"). This memorandum is not a disciplinary action nor will it become part of your official personnel file, although a copy will be placed in your local personnel file.

Despite repeated efforts to communicate with you (and to counsel you) over the past year, you have continued to display outward resentment toward being supervised and, at times, to blatantly refuse or fail to comply with appropriate instructions from me as your direct supervisor. While, on occasion, you have voiced a willingness to provide support in the common personnel objectives between your position and mine, you continue to carry out your duties only according to how you perceive them and respond to my efforts to align your priorities with those assigned to me by my supervisors with indifference and hostility. My attempts to counsel you with the hopes of opening communication lines and improving specific work and attendance related deficiencies have been met by you with anger and resentment.



## APPENDIX 4-C

Despite three directives from me (including written warning), you have refused or declined to disclose the password to your government-supplied computer, as is the case with every other employee in this office, to the Administrative Manager so that she may access office files stored on the government-issued computer in the office assigned to you. Many files stored on your computer are placed or reside there because of information sent to you by the Administrative Office and by others who send to you official notices, forms, and personnel-related documents. In this respect, privacy is not the issue as noted by the Opening Banner displayed to every employee each time he or she first turns on his or her computer. Your continued refusal to supply your password creates inefficiencies, unneeded duplication, and unsatisfactory work.

You have refused to have your work reviewed by me before you summarily and without my prior authorization, distribute it office-wide, contrary to my express instructions. Some of these unilateral, unapproved distributions by you have resulted in inapplicable or erroneous information being disseminated.

You have failed to communicate with me and with other administrative staff so as to reduce or minimize errors. On at least two occasions, I had instructed you to immediately contact other administrative staff whom you had been refusing to respond to despite their repeated attempts to reach you while you were present in the office.

You have missed a great deal of work and have often failed to submit timely written requests for leave. You have also refused to communicate what it is that you are in the process of working on before taking large amounts of leave so proper arrangements can be made if time sensitive projects are involved.

You have challenged my authority as your supervisor and responded to my work requests with inaction, indifference, or hostility. Your written remarks to me of December 6, 2002 that I should "stay off [your] back" and

## APPENDIX 4-C

other confrontational comments [were] inappropriate, if not insubordinate.

I have received reports that other staff, based on your hostile and belligerent attitude, would prefer not to deal with you. Most recently I have learned of complaints by members of automation regarding your suspicious and angry demeanor towards them to the point they are reluctant to work with you.

We have discussed these issues both formally and informally, but you have not wanted to discuss in detail the reasons for your conduct and performance. If these problems continue, some type of disciplinary action will be taken. I strongly recommend that you take whatever action is necessary to immediately improve. While I may not be fully aware of the reasons for these problems, I am concerned about them and about you. I find some of your most recent behavior and your claims of computer surveillance and conspiracy especially disturbing, and I want to be sure you have the opportunity to use all of the assistance available to you.

Therefore, I direct you to contact the EAP. If any personal problems are affecting your work, the EAP may be of help to you. I have discussed this referral with the EAP Counselor, Marybeth Guagliardo, and she is expecting your call on or before March 14, 2003. Please call her at (404) 730-2384 by 5:00 p.m. on March 14, 2003.

Please note that information about your participation in the EAP will be kept confidential unless disclosure is required by law or safety concerns. You will be granted administrative leave to attend EAP sessions, and I will be told whether you are keeping your appointments. You are expected to fully cooperate and participate in the EAP. The conduct and performance problems I noted above must be corrected. With an effort on you part and help from the EAP, I am hoping you can correct these issues.

c: Norman Zoller  
Naomi Godfrey



APPENDIX — 5-C

UNITED STATES COURT OF APPEALS  
ELEVENTH JUDICIAL CIRCUIT

Norman E. Zoller     56 Forsyth Street, N.W.  
Circuit Executive     Atlanta, Georgia 30303  
404/335-6535

March 17, 2003

Naomi Godfrey, Esq.  
Senior Staff Attorney  
United States Court of Appeals     Douglasville, GA 30135  
for the Eleventh Circuit  
56 Forsyth Street, NW,  
Atlanta, GA 30303

SECOND  
ORDER

Ms. Evelyn Johnson  
6241 S. Skyline Drive  
Douglasville, GA 30135

Re: Complaint of Evelyn Johnson

Dear Ms. Godfrey and Ms. Johnson:

The enclosed order is a revised version of the order dated March 12, 2003 and transmitted to you on March 13, 2003. The first order should be discarded and substituted with the enclosed order, also dated March 12, 2003. The substance of the order has not been altered. Thank you and

Best regards,  
/s/ Virgil E. Alexander  
Virgil E. Alexander  
Assistant Circuit Executive

/vea  
Enclosure

c: The Honorable J. L. Edmondson  
The Honorable Janet F. King

APPENDIX — 5-C

Mr. Jeffrey Bramlett, Esq.  
Mr. Norman E. Zoller

---

**ENVELOPE FOR THE SECOND ORDER**

Circuit Executive  
United States Court of Appeals  
Eleventh Judicial Circuit  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303  
[Official Business]

Ms. Evelyn Johnson  
6242 S. Skyline Drive  
Douglasville, GA 30135

**[Pet.'s Note:** Judicial Council's second GENERAL ORDER 2003-E below, filed March 12, 2003, was mailed to Petitioner on March 17, 2003, and received by Petitioner on March 18, 2003. The Order was *revised by removing* all names of the Judicial Council members on the original Order, but there was no change in substance.]

**APPENDIX — 5-C**  
**FOR THE ELEVENTH CIRCUIT**  
**JUDICIAL COUNCIL**

**GENERAL ORDER 2003-E**

**IN RE: PETITION FOR REVIEW**

**FILED BY EVELYN JOHNSON**

**ORDER**

<b>Second Order</b>
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Evelyn Johnson has filed several documents relating to her Petition for Review, including her (1) Motion to amend File, (2) Motion to Amend Complaint and Consolidate File, (3) request to include in the record the Staff Attorney's Self Study and associated Staff Attorney's Office Questionnaires construed as a Motion to Amend File, (4) "Supplemental Evidence" attached to the Amended Pleadings for Petition for Review construed as a Motion to Amend File, (5) letters of February 08, 2003, February 06, 2003 and February 01, 2003 construed as Motions to Amend File, and (6) request that the court provide her with copies of the Defendant's exhibits from the hearing and various unidentified documents.

1. The motions to Amend File are DENIED. The Council may only consider evidence that was part of the

## APPENDIX — 5-C

record at the time of the pertinent hearing.

2. The Motion to Amend Complaint and Consolidate File is DENIED. Insofar as the motion seeks to add Sara Gilibert as a respondent it is prohibited by Chapter VII § 7 of the EDR Plan. To the extent this motion asks the court to consider evidence of alleged retaliatory conduct by Ms. Gilibert, the motion is denied for the same reason as the Motions to Amend File.

3. Petitioner's request that she be provided with copies of the Defendants exhibits from the evidentiary hearing is DENIED as moot. Her request to receive copies of unidentified documents is DENIED.

Nothing in this order should be construed as preventing Petitioner from filing a formal request for counseling in accordance with Chapter VII §5 to bring a new retaliation claim based on the events raised in the Motions to Amend File and the Motion to Amend Complaint and Consolidate File. The 30 day time limit for filing the claim shall be tolled for the period between the filing of the specific motion and this order. Petitioner is advised to consider

**APPENDIX — 5-C**

**Chapter VII § 2(A) of the EDR Plan before bringing a new complaint.**

**Done at Atlanta, Georgia on 12 March 2003.**

**FOR THE JUDICIAL COUNCIL**

**/s/ J. L. EDMONDSON**

**Chief Judge**

APPENDIX — 5-C

UNITED STATES COURT OF APPEALS  
ELEVENTH JUDICIAL CIRCUIT

Norman E. Zoller 56 Forsyth Street, N.W.  
Circuit Executive Atlanta, Georgia 30303  
404/335-6535

March 13, 2003

Naomi Godfrey, Esq.  
Senior Staff Attorney  
United States Court of Appeals  
Eleventh Circuit  
56 Forsyth Street, NW,  
Atlanta, GA 30303

Evelyn L. Johnson  
6241 S. Skyline Drive  
Douglasville, GA 30135

**FIRST  
ORDER**

Re: Complaint of Evelyn Johnson

Dear Ms. Godfrey and Ms. Johnson:

I have enclosed an order of the Judicial Council addressing the several motions/requests made by Ms. Johnson. The Council will not accept any papers from you concerning this ruling. You will be notified when the Council issues a final ruling on Ms. Johnson's Petition for Review.

Best regards,

/s/ Virgil E. Alexander  
Virgil E. Alexander  
Assistant Circuit Executive

/vea

## APPENDIX — 5-C

Enclosure

c: The Honorable J. L. Edmondson  
The Honorable Janet F. King  
Mr. Jeffrey Bramlett, Esq.  
Mr. Norman E. Zoller (w/o encl.)

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### ENVELOPE FOR THE FIRST ORDER

Circuit Executive  
United States Court of Appeals  
Eleventh Judicial Circuit  
56 Forsyth Street, N.W.,  
Atlanta, Georgia 30303  
[Official Business]

Ms. Evelyn Johnson  
6242 S. Skyline Drive  
Douglasville, GA 30135

[**Pet.s' Note:** Judicial Council's original GENERAL ORDER 2003-E below, filed March 12, 2003, was mailed to Petitioner on March 13, 2003, and received by Petitioner on March 14, 2003. The Order was *revised by removing* all names of the Judicial Council members, but there was no change in substance.]



**APPENDIX — 5-C  
FOR THE ELEVENTH CIRCUIT**

**JUDICIAL COUNCIL**

**GENERAL ORDER 2003-E**

**IN RE: PETITION FOR REVIEW**

**FILED BY EVELYN JOHNSON**

**Before EDMONDSON, Chief Judge, TJOFLAT,  
ANDERSON, BIRCH, DUBINA, BLACK, CARNES,  
BARKETT, HULL, and MARCUS, Circuit Judges, and  
ALBRITTON, BOWEN, BUTLER, CLEMON, EVANS  
FAWSETT, SANDS, ZLOCH and VINSON, Chief  
District Judges.**

**First  
Order**

**ORDER**

Evelyn Johnson has filed several documents relating to her Petition for Review, including her (1) Motion to amend File, (2) Motion to Amend Complaint and Consolidate File, (3) request to include in the record the Staff Attorney's Self Study and associated Staff Attorney's Office Questionnaires construed as a Motion to Amend File, (4) "Supplemental Evidence" attached to the Amended Pleadings for Petition for

## APPENDIX — 5-C

Review construed as a Motion to Amend File, (5) letters of February 08, 2003, February 06, 2003 and February 01, 2003 construed as Motions to Amend File, and (6) request that the court provide her with copies of the Defendant's exhibits from the hearing and various unidentified documents.

1. The motions to Amend File are DENIED. The Council may only consider evidence that was part of the record at the time of the pertinent hearing.

2. The Motion to Amend Complaint and Consolidate File is DENIED. Insofar as the motion seeks to add Sara Gilibert as a respondent it is prohibited by Chapter VII § 7 of the EDR Plan. To the extent this motion asks the court to consider evidence of alleged retaliatory conduct by Ms. Gilibert, the motion is denied for the same reason as the Motions to Amend File.

3. Petitioner's request that she be provided with copies of the Defendants exhibits from the evidentiary hearing is DENIED as moot. Her request to receive copies of unidentified documents is DENIED.

## APPENDIX — 5-C

Nothing in this order should be construed as preventing Petitioner from filing a formal request for counseling in accordance with Chapter VII §5 to bring a new retaliation claim based on the events raised in the Motions to Amend File and the Motion to Amend Complaint and Consolidate File. The 30 day time limit for filing the claim shall be tolled for the period between the filing of the specific motion and this order. Petitioner is advised to consider Chapter VII § 2(A) of the EDR Plan before bringing a new complaint.

Done at Atlanta, Georgia on 12 March 2003.

FOR THE JUDICIAL COUNCIL

/s/ J. L. EDMONDSON

Chief Judge

**APPENDIX 6-C**

**E-MAILS NOTIFYING  
UPPER MANAGEMENT  
CONCERNING PROBLEMS  
WITH COMPUTER**

Evelyn Johnson

03/10/2003 08:56AM

To: Norman Zoller  
/CA11/11/SCOURT@USCOURTS  
JL Edmondson  
/CA11/11/USCOURT@USCOURTS

cc: George A Watson  
/CA11/11/USCOURT@USCOURTS  
Jim Smith  
/CA11/11/USCOURT@USCOURTS  
Naomi Godfrey  
/CA11/11/USCOURT@USCOURTS  
Karen Sinyard  
/CA11/11/USCOURT@USCOURTS  
Sara Gilibert  
/CA11/11/USCOURT@USCOURTS

Subject: printer

Dear Mr. Zoller:

I am trying to work here and trying to print some WP forms for our new employees starting work today. While I have not done any changes on my computer, my printer would not allow me to print and giving me a message indicating "no printer installed" although my printer is still attached and defaulted as my printer. This inappropriate action needs to stop, and I request your immediate action concerning this matter. Thank you very much.

Sincerely,

APPENDIX 6-C

Evelyn Johnson

---

Norman Zoller

03/07/2003 10:41 AM

To: Evelyn Johnson  
/CA11/11/USCOURT@USCOURTS

cc: George A Watson  
/CA11/11/USCOURT@USCOURTS  
Jim Smith  
/CA11/11/USCOURT@USCOURTS  
Naomi Godfrey  
/CA11/11/USCOURT@USCOURTS  
Karen Sinyard  
/CA11/11/USCOURT@USCOURTS  
Sara Gilibert  
/CA11/11/USCOURT@USCOURTS

Subject: Re: PC Workstation

Thank you. The plain wording contained in the Court's notification banner speaks for itself.

---

Evelyn Johnson

03/07/2003 10:24 AM

To: Norman Zoller  
/CA11/11/SCOURT@USCOURTS

cc: George A Watson  
/CA11/11/USCOURT@USCOURTS  
Jim Smith  
/CA11/11/USCOURT@USCOURTS  
JL Edmondson

## APPENDIX 6-C

/CA11/11/USCOURT@USCOURTS

Naomi Godfrey

/CA11/11/USCOURT@USCOURTS

Karen Sinyard

/CA11/11/USCOURT@USCOURTS

Sara Gilibert

/CA11/11/USCOURT@USCOURTS

Virgil Alexander

/CA11/11/SCOURT@USCOURTS

Subject: Re: PC Workstation

Dear Mr. Zoller:

Thank you for taking the time to respond to my concerns. I would like to clarify, however, the issue you brought up related to my suspicions of computer surveillance statement, and in response to your question on the Court's notification banner.

First, with all due respect to the Court and to you, I do not stake a claim on anything in this office, and I am fully aware that items here, including computers, belong to the U.S. government. I am also fully aware of the Court's notification banner when we turn on our computers. I have no problems nor qualms with the systems monitoring since I never had, and do not intend to, conduct any criminal or illegal activity here or anywhere.

Second, prior to filing my EDR complaint, I have never felt this silent work hostility, and I do have a problem when I know I am being singled-out, whose work is being monitored via computer, by the respondents. It is extremely demoralizing to know that although I was stripped off my duties while I never had any work performance problems for 14 years of my employment here, the computer surveillance of the work I do is in retaliation to the cause of action I took with regard to the numerous adverse employment issues I

APPENDIX 6-C

have with this office.

Respectfully,

Evelyn Johnson

---

Norman Zoller

03/06/2003 05:16 PM

To: Evelyn Johnson  
/CA11/11/USCOURTS@USCOURTS

cc: George A Watson  
/CA11/11/USCOURT@USCOURTS  
Jim Smith  
/CA11/11/USCOURT@USCOURTS  
JL Edmondson  
/CA11/11/USCOURT@USCOURTS  
Naomi Godfrey  
/CA11/11/USCOURT@USCOURTS  
Karen Sinyard  
/CA11/11/USCOURT@USCOURTS  
Sara Gilibert  
/CA11/11/USCOURT@USCOURTS  
Virgil Alexander  
/CA11/11/SCOURT@USCOURTS

Subject: Re: PC Workstation

Dear Ms. Johnson:

The situation with respect to operations of the computer at your work station is being investigated.

One particular matter in your memorandum below, however, raises an issue that I wanted to be certain you are aware of and that has to do with your statement relative to your "suspicions of computer surveillance."



## APPENDIX 6-C

Among other items of Government property, the chairs on which we sit and the desks and computers at which we work and are entrusted, are not ours – they are the property of the United States Federal Judiciary, and we are custodians of that property.

Each day when you and I first turn on the computers at our respective desks, we see a notification banner that the Court has directed be displayed that states, "WARNING: THIS SYSTEM IS FOR USE BY AUTHORIZED USERS ONLY."

Are you representing that you have not been aware of or understood this notification banner? Further, if you do not consent to such monitoring, you should so inform your supervisor and other appropriate steps could be considered (for example, the computer could be removed; network accessibility could be disabled, et. al.). It would seem, however, that such resource issues and accessibility could affect the stated and implied responsibilities of your position and your capacity to discharge those responsibilities.

It would also be inappropriate for anyone to attempt to defeat, subvert, or override the Court's capability to monitor use of these Government supplied machines. If you have questions about these matters, I invite you to consult with Jim Smith or with your supervisor. Best wishes.

---

Evelyn Johnson

03/06/2003 12:34 PM

To: Jim Smith  
/CA11/11/USCOURT@USCOURTS

cc: JL Edmondson  
/CA11/11/USCOURT@USCOURTS

## APPENDIX 6-C

Norman Zoller  
/CA11/11/USCOURTS@USCOURTS  
Virgil Alexander  
/CA11/11/USCOURTS@USCOURTS  
Naomi Godfrey  
/CA11/11/USCOURT@USCOURTS  
Karen Sinyard  
/CA11/11/USCOURT@USCOURTS  
Sara Gilibert  
/CA11/11/USCOURT@USCOURTS  
George A Watson  
/CA11/11/USCOURT@USCOURTS

Subject: Re: PC Workstation

Jim,

Sorry for the call yesterday (February 26). I did not know that you are out of town.

As you mentioned on your Monday's email below to contact you if I have questions concerning my PC, I would like to let you know that there had changes made again to my workstation PC while I was out last week. Your email below implied that I had made changes and requested to refrain from making any changes to my PC. My response to your email clearly stated I had nothing to do with the changes made my PC.

Yesterday, I was certain that my PC was reconfigured back to the way it was, prior to the replacement of my original PC (hard/local/c:drive). Software and applications, including Lotus Notes and My Documents Files are all located on the c:\drive. Although document files are saved on the F:\drive, they are all located and maintained on the local c:\drive.

Sincerely,

## APPENDIX 6-C

Evelyn Johnson

P.S. (March 6, 2003)

I held off sending this email to ensure my computer was NOT just acting up. Beginning this week, and today, George Watson came to my workstation since I asked him to check my computer once again to verify my suspicions of computer surveillance. Although I copied all the PC information from the Netware Security Window on a piece of paper to ascertain my computer settings, George said he did not know why my computer was set that way. I did not believe George since he was the one who assisted George since he was the one who assisted the office, and the only automation person who made the changes and reconfigured my current PC.

The applications on my desktop show the following:

My Computer:	There was an additional "Local Disk - D Drive" Share Name - D\$ Comment - Share this folder Hardware - IBM-DTLA-30715 (My local C: Drive is CA11-32016)
My Documents:	Contain four (4) folders: CCWIN 9; Corel User Files; My Pictures; and Old Excel Documents (All folders are useless for me and they contain nothing of my work)

Netware Security Window: Although the Change Password Resource contains two icons (a computer and a tree, both under my name), the Resource (my name(s)) are ALL CONNECTED to ALL RESOURCES, which included 29 computers and 39 other computers/network courtwide.

## APPENDIX 6-C

Excel: When I try to locate a file saved on excel, it takes me to My Documents Application (see above), which gives me the useless folders.

The bottom line is that, the work that I do is being dumped on the C:\drive then copied on the F:\drive of my PC. Since the Computer Security & Automation Users Guide explicitly prohibits anyone from accessing or viewing any user files or data without the user's authorization and you do not want me to make any changes to my PC, I request that my workstation PC be replaced. I appreciate your assistance and response concerning this matter. Thank you.

----- Forwarded by Evelyn  
Johnson/CA11/11/USCOURTS on 02/27/2003 08:15 AM-----

Evelyn Johnson

02/25/2003 08:41 AM

To: Jim Smith  
/CA11/11/USCOURT@USCOURTS  
cc: Naomi Godfrey  
/CA11/11/USCOURT@USCOURTS  
George A Watson  
/CA11/11/USCOURT@USCOURTS

(bcc: Evelyn Johnson  
/CA11/11/USCOURT@USCOURTS)

Subject: Re: PC Workstation

Thanks for your email, Jim. Yes, I have had numerous problems with my PC workstation and my hard drive has been replaced twice, first by Ken, and second, the one I have now, Tony. I appreciate all the help.

On Thursday, February 13<sup>th</sup>, George replaced the applications on my PC, as you mentioned below. The only

## APPENDIX 6-C

change I made on my PC was my password, which was on the same day, the 13<sup>th</sup>. Beginning the 14<sup>th</sup> through 23<sup>rd</sup> of February, I was out yesterday, the 24<sup>th</sup>, was my first day back to work.

I called George yesterday morning after numerous times I failed to login to my PC. In fact, yesterday around 9:00-9:30 a.m., after George came to my workstation, reset and reconfigure my PC, was the first time I was able to login to my PC since the 13<sup>th</sup> of February. I can assure you, Jim, that if you noticed any changes on the software, both the operating system and applications, I have nothing to do with those changes. Thank you very much for your help and assistance.

Evelyn

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Jim Smith

02/24/2003 02:04 PM

To: Evelyn Johnson  
/CA11/11/USCOURT@USCOURTS

cc: Naomi Godfrey  
/CA11/11/USCOURT@USCOURTS

Subject: PC Workstation

Evelyn, before you were out on leave last week, George Watson (along with a few others in Automation) have been over to help assist you with some problems you have been experiencing with the PC at your work area. George replaced your PC with a new one and a fresh image of applications. This image was based lined to help track down problems you have reported. I want to reiterate to you, our request to refrain from making any changes to the software, both the operating systems and applications. This will help

## APPENDIX 6-C

us in tracking down any workstation problems.

Please contact me if you have any questions on this matter.

Jim K. Smith  
Circuit Executive's Office  
Eleventh Circuit Court of Appeals  
56 Forsyth Street, NW,  
Atlanta, GA 30303-2289  
404/335-6581 - voice, 404/335-6540 - fax

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Ken Hudson

03/10/2003 10:26 AM

To: Evelyn Johnson  
/CA11/11/USCOURT@USCOURTS

cc:

Subject: Problem number: 0303014 has been assigned  
to: Ken Hudson

You reported a problem or made a request with the Help Desk.

Subject: unable to print

You will be contacted on the status of your problem/request. Thank you

This is an automated message, please do not reply.

APPENDIX — 7-C

6241 S. Skyline Drive  
Douglasville, Georgia 30135

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February 6, 2003

VIA HAND DELIVERY & U.S. MAIL

Virgil Alexander  
Assistant Circuit Executive  
United States Court of Appeals  
for the Eleventh Circuit  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303-2289

RE: EDR Complaint and Continuing Retaliatory Actions,  
Evelyn Johnson

Dear Mr. Alexander:

Attached are three attachments, all of which are to be included in the continuing retaliatory actions and harassment contributing to hostile work environment, in connection with my filed EDR complaint.<sup>1</sup>

As I exercise my legal employment rights protected by the statute under the EDR Plan and file actions necessary to proceed with the process, the SAO management continues to respond to me in an adverse manner. I infer these actions as a continuing harassment and retaliatory due to my filing of the EDR complaint.

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<sup>1</sup> Attachment 1, as I explained to Sara Gilibert on my e-mail was unintentional, and when I found out what the e-mail was about, I immediately acted on what I needed to do.



## APPENDIX — 7-C

Throughout my career with the federal government, 6+ years with other federal agencies and 14+ years with the SAO, including any other work related and professional situations, I have maintained my professionalism without an adverse record on any of my employment files. While I come and work under difficult circumstances and environment, the Respondents continue to demoralize and harass me. Any reasonable person in the same situation would have already resigned, may have been irrational, and perhaps may have been out of control in dealing with this situation. I, however, firm on my conviction that I have done nothing but acted responsibly in attending to my duties from the time I have been employed with the SAO through the present.

While I know my daily activity is being monitored by either or both Respondents via computer, Attachment 1, a directive/order from Sara Gilibert shows how the Respondents make such a big issue out of something trivial, just to make my work environment more intolerable. Issuing a directive to me for that matter as if I am a child, who do not know how to follow directions, or to intentionally neglect my duties is nothing but another retaliatory action.

While Sara Gilibert does not know me well enough as an employee, the Respondents have known me, and have worked with and for them, for more than 14 years. The Respondents also know that there is not much work for me to do as a result of their adverse employment actions. The very little remaining "manual" duties left for me to do, such as information material from the AO, which for all practical practices and common sense tells me, that I need to relate that information to all staff since it is my responsibility before Sara Gilibert was hired. <sup>2</sup>

While I am still employed by this office and having

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<sup>2</sup> Attachment 2, shows that I am the only person in the SAO who received the e-mail, other than HR personnel from the Clerk's Office.

## APPENDIX — 7-C

worked independently all those years, I was again censured and issued another directive/order. I could not even exercise common sense and judgment in doing simple duties. This shows how the management really feels about me and my work, and that I could only infer by the management's action that I am incapable, brainless, and an incompetent employee that everything should be run through them even as simple as the referenced task. I believe that the action was not only retaliatory and harassment, but also issues involving control, power, and/or too much time that the management has on their hands to pick on me to make my life here rather miserable, and in all likelihood, that was their intention, so I just quit my job.

This afternoon, around 4:00 p.m., Sara Gilibert came to my office and delivered to me the Attachment 3. We talked about the letter and I told Sara Gilibert how I feel about the whole thing, and that Karen Sinyard has access already onto my computer, therefore, I do not need to give her my computer password. Sara Gilibert informed me that since I refused to give my password that was ground for insubordination, including dismissal. I told Sara Gilibert that had the situation been different, I do not have any problems giving my computer password as I had done in the past. Furthermore, as I reiterated to Sara Gilibert, the Automation employee told me that nobody should know our computer password, if nobody has any need to access anyone's computer. We are not even able to access someone's computer even if we use our own password. Although the office policy is that, someone should have a list of passwords of employees, only because there are times that someone should be able to access an attorney's computer when a judge asks for a copy of the memo produced by a particular attorney.<sup>3</sup> I believe the magnitude of adverse employment actions I have already been through, from the very onset of the first adverse employment action in 1996 that I have

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<sup>3</sup> Attachment 3, Disciplinary Action Letter

## APPENDIX — 7-C

reasonably inferred, through the filing of the instant claim and at present, I request the Court to take appropriate immediate action to intervene with this conflict. Thank you very much for your attention to this matter. I remain,

Respectfully,

/s/ Evelyn Johnson

c:     The Honorable Chief Judge Edmondson  
          The Honorable Mag. J. King  
          Naomi Godfrey  
          Jeffrey Bramlett

Enclosures (3 Attachments)

**APPENDIX — 7-C**

**SUPPLEMENTAL MATERIAL EVIDENCE**

**FOR PETITION FOR REVIEW**

**by the Eleventh Circuit Judicial Council**

**EMPLOYMENT DISPUTE RESOLUTION (EDR) PLAN**

**IN RE: Evelyn Johnson, Petitioner**

This amended pleadings contain supplemental material evidence to support the allegations I raised and advanced at the initial stage of the EDR process. Submission of the supplemental material evidence is essential for the court to determine fully and the totality of the circumstances, evidence, and as rebutted by the opposing party and raised a question of hearsay and relevancy.

The documents I presented to the court earlier contained true information depicted from these documents. I prepared charts and tables to illustrate to the court the validity of my claims, to protect the privacy of those persons who are not involved in this complaint, and more important, being mindful of the Privacy Act Law.

It is now essential to submit these documents. Under

## APPENDIX — 7-C

the special circumstances, disclosure of the information is required by law because non disclosure could reasonably be expected to cause substantial harm to my complaint. Pursuant to 5 U.S.C. § 552a(c)(3) and (d), these documents are "exempt from the Act's requirement when litigation or claim cases occur, it may be necessary to conduct investigations to develop information and evidence relevant to the case. . . . To the extent that the disclosure of material would reveal the identity of the source would be held in confidence. . . ."

I attest to the validity of these records and true copy of the official personnel paperwork submitted to the Administrative Office of the U.S. Courts (AO). Likewise, these documents are being submitted to the court and will be used solely to prove the legitimacy of my allegations.

Respectfully submitted,

January 22, 2003

Date

/s/ Evelyn Johnson

Signed

## APPENDIX — 7-C

### STATEMENT ON CONTINUING RETALIATION

#### VIOLATION AND HOSTILE WORK ENVIRONMENT

The e-mail from Sara Gilibert dated 12/06/02, and my response to her showed I have reached my breaking point to what I feel a continuing retaliatory action, harassment, and hostile working environment as a result of filing my EDR claim. I request to include Sara Gilibert as party to the Respondents, along with Naomi Godfrey, and Karen Sinyard and request to consolidate this Motion with my claim.

Ms. Gilibert's action, whether acting on her own, or was urged by Naomi Godfrey to get back with me was seemingly coincidental to the dates and actions occurring since I filed my EDR claim. E-mail dated 3/25/02, 13 days preceding filing of the claim began the events that what I construe as a retaliatory action. The handling of my leave in April and May 2002 due to my mother's critical illness and eventual death, e-mail dated 10/08/02 sent to me after the evidentiary hearing, and most recently, the attached e-mail after Naomi Godfrey found out that I had proceeded to file a petition for review by the judicial council in connection with my complaint.

As shown on Sara Gilibert's e-mail, her superior and bossy attitude, lack of management skill, and lack of tact suggest to me as if she was dealing with a child. I ignored to respond her e-mails, which would take time away from work if I answer all of them the way I wanted to, asking me to do things and to let her know when, how long the tasks were done. While she has no prior experience on all the duties I had performed in the SAO for over a decade, and without known problems, Sara Gilibert must not have much to do but to get me to document my work, what I have done, etc. (See Attachments 1 and 2).



## APPENDIX — 7-C

But then again, it was so coincidental that the e-mail was sent to me after Naomi found out about my petition for review by the judicial council. As I have seen Naomi Goff's behavior, her tenacity and apparent resistance to comply with the anti-discrimination law, it would not surprise me if she urged Sara Gilibert to send that e-mail to me.

As a result of my response to Sara Gilibert's e-mail, Sara Gilibert has been giving me dirty looks as if I don't belong there, and have no business being there in the SAO. While Sara Gilibert and I still talked and were civil with each other although I already sensed hostility, since I sent my response to her e-mail, we haven't talked and I feel so isolated. While I don't have problems with the rest of the staff, I do not have to interact with them on regular basis other than if they have questions/problems concerning payroll or personnel. My duties involved constant interaction with the upper management, but now that Sara Gilibert and Jackie Williams are trained, the upper management does not have to interact with me as most of my work has been delegated to both of them.

While I have not recovered from emotional trauma nor have I gone through the emotional grieving process for the loss of my mother, the hostility at work, exclusively from the Respondents, and the stress level, coming to work becomes unbearable. Although I still manage to stay calm and collected at work, taking 20 mg. of Prozac twice a day, and 20 mg. Of Adderall, a stimulant to control narcolepsy, three times a day, could not do wonders on my emotional state. My personal demeanor at home is unreasonable, always snappy to my husband for no reason. I have no motivation to do ordinary things I used to do such as housework, and have been disassociating myself from my personal friends. All I want to do is sleep after bouts of crying spells. I am a happy person, always look on the



## APPENDIX — 7-C

positive of the people and the world, but I hate what is happening to me. I resent and could not stand being in the same area with persons I could not trust, nevertheless, same persons I lost all respect as authority figure.

I appeal to the court for the expedient resolution of this matter. As an aggrieved employee and have been subjected to numerous adverse employment actions, my working condition has deteriorated for the past nine long months. If possible, I request the court to remove me from my workplace without suffering more injury that would ultimately affect my retirement and employment benefits. If Naomi Godfrey's intention is to get rid of me, I am making way. I do not need my job to cause me so much grief, and I do not deserve the emotional pain and suffering I am being subjected. I have done nothing wrong with these people. I could not see myself having an emotional breakdown, sacrificing my own health in order to preserve my federal employment rights.

Respectfully submitted,

/s/ Evelyn Johnson  
Petitioner

December 11, 2002  
Date

## APPENDIX — 7-C

12/6/02

Sara,

I resent the fact that you keep getting on my back to know if the job is done or not. Before you even came to work here for the last 13 years, 10 months, and 19 days, nobody had been keeping tabs if my work has been done or not, that is, with more work and less help. I do have initiative and self-directed and I get the job done. I am not a child and do not have to be told twice, and most of all, I do resent your attitude for doing that. Let me explain to you the things you asked me to do below.

1. Voluntary leave donation request. You asked me to do it the week before the Thanksgiving holiday. I told you I was in the middle of completing the big EEO report to be submitted to Nancy Burnham. You have no clue how long it takes to put together that report, specifically, if you go by the list manually. You may ask Cheryl Vessels or Nancy Burnham if you want to. I finished that report, submitted it for signature, and you told me that you have to edit the narrative before submitting to Nancy Burnham. Very little editing was done from the original narrative, and that report, the statistics itself, is most important to balance, and must all be correct since I have not heard from Nancy.

2. After I work on that, we have had two attorneys and a support staff who resigned, and I have to prepare their paperwork. I completed all separation paperwork before I took the time off for the Thanksgiving holiday and advised Jackie what she needed to do with them.

3. I have arranged to talk to Janna today at 3:00 p.m. before she separates. It is not mandatory that her separation papers leave the office the same day of her separation date. The following day is fine as long as there is

## APPENDIX — 7-C

nothing out of ordinary concerning the separation of the employee, such as leave-without-pay. And for your information, I spoke with Amy Fouts on her last day of work. The paperwork originating from here were sent to AO timely. In speaking with Ed Pike, someone at the AO processed her paperwork, which I don't have any control, and for your additional information, that was not an out of ordinary event. AO calls here all the time for copies of personnel forms asserting they did not receive them, if we do not have working copy here, then you are back to square one. I can understand AO sometimes because of the bulk of paperwork they have to handle all the time.

Furthermore, I tell separating attorneys the procedure concerning their last paycheck and lump sum money and when approximately they should receive the checks. I have been doing this for almost four years, and granted that there could be snafues to occur, don't blame it here. I am not afraid to accept fault if I am at fault, but I refuse to take someone else's fault. And if the attorney complained to you otherwise, in this particular situation, Amy Fouts, that is her problem. I told her all that information but she was not all here, did not even want to sit down, and just stood up beside me. She did not listen to what I told her. Like you said, Jackie ended up sending another AO 193, and our file in Amy's file showed that her paperwork was done.

4. I am sure you wonder why I have not sent the paperwork for the new hire yesterday afternoon. I tried to open that drawer of forms in the file cabinet but it was jammed and would not open. The only way it opened this morning was I had the building maintenance guy to force it open this morning. He paperwork has been sent out.

5. The personnel files, resumes, and transcripts you are talking about, I had revisited all those files several

## APPENDIX — 7-C

months ago and they were all complete.

6. The chart you are talking about, Cathy Hester puts it out, why am I to update it? She should update that every time there are changes on her list. I forward her a copy of employee's new address if and when employees notify me they have moved.

7. Last, I know I have not done the voluntary leave donation request. It was put on hold on the bottom of my priority, and I was out on leave for a week. That is the next thing I will do. One thing I would like to mention is that Jackie now works under you. Regardless of whether she is busy copying cases, Naomi already asked her not to do, that is the other supervisor's responsibility to ask another staff to do. Some things that are pressing and needs to be done right away and I am tied up with other work to do, ask Jackie. She is trained to do them, and if she has questions, I will be glad to answer.

8. Last but not least, if you ask me to do something, consider it done. You have not been here long enough to know everything, and to preserve harmony, please stay off my back.

Thank you.

/s/ Evelyn

Signed

**APPENDIX 8-C**

**UNITED STATES DISTRICT COURT**

**Northern District of Georgia  
1613 U.S. Courthouse  
75 Spring Street, SW  
Atlanta, Georgia 30303-3361**

**Janet F. King  
United States  
Magistrate Judge**

**Tel: 404-215-1385**

**November 14, 2002**

**Evelyn Johnson  
6241 S. Skyline Drive  
Douglasville, GA 30135**

**Dear Ms. Johnson:**

Enclosed is the final decision of the designated judicial officer on your complaint filed July 9, 2002, pursuant to the Eleventh Circuit Court of Appeals' Employment Dispute Resolution ("EDR") Plan, Chapter VII, § 7. You may, within twenty-one (21) days of date of this letter, petition for review of the final decision pursuant to the procedures set forth in Chapter VIII of the EDR Plan.

**Regards,**

**/s/ Nancy P. Borders  
Nancy P. Borders  
Administrative Judicial Assistant**

**Encls.**

**cc: Chief Judge J.L. Edmondson  
Robert Phelps  
Naomi Godfrey  
Karen Wilbanks  
Jeffrey Bramlett**

**APPENDIX 8-C**

**UNITED STATES COURT OF APPEALS**

**FOR THE ELEVENTH CIRCUIT**

**EMPLOYMENT DISPUTE RESOLUTION PLAN**

**IN RE:** Complaint of Evelyn Johnson

**NOTICE TO THE PARTIES**

A hearing was conducted on this matter on September 25 and 26, 2002. Pursuant to the Eleventh Circuit Court of Appeals Employment Dispute Resolution Plan ("EDR Plan"). The final decision of the designated judicial officer must be issued not later than sixty (60) days after the conclusion of the hearing. EDR Plan Chapter VII, § 7C(2)(g). The final decision is issued within the Plan's designated deadline.

The date of the letter transmitting the final decision to Petitioner Evelyn Johnson is November 14, 2002. Petitioner may, within twenty-one (21) days of the date of said letter, petition for review of the final decision pursuant to the procedures set forth in Chapter VIII of the EDR Plan. EDR Plan, Chapter VII, § 8.

In chambers, Atlanta, Georgia, this 14<sup>th</sup> day of November 2002.

/s/ Janet F. King  
UNITED STATES MAGISTRATE JUDGE  
(Designated E.D.R. Judicial Officer)



## APPENDIX 8-C

IN RE: Complaint of Evelyn Johnson

### DECISION OF THE JUDICIAL OFFICER

This is a proceeding pursuant to the Eleventh Circuit Court of Appeals Employment Dispute Resolution Plan ("EDR Plan"). Petitioner Johnson alleges that the Staff Attorneys' Office for the Eleventh Circuit Court of Appeals discriminated against her on the basis of her race, color, national origin, age, religion and gender as a result of acts occurring since 1996. [Complaint, dated March 12, 2002 ("2/12/2002 Complaint"), ¶¶ II. A and B]. The claims of discrimination set forth in Petitioner's complaint filed following mediation are: (1)<sup>1</sup> denial of a promotion Petitioner alleges she was promised in 1996; (2) denial of equivalent pay rate for seven (7) months following the conversion from the JSP system to CPS system in 1996; (3) failure to reclassify Petitioner's position based on additional duties assumed in 1999 and failure to promote Petitioner to Office Manager, Classification Level ("CL") 28, in January 2000; (4) failure to promote Petitioner to Automation Specialist, CL 27, in January 2000, and promotion of another employee, a black male, within the first four (4) years of his employment to the same classification level as that held by Petitioner; (5) denial of promotion to Personnel Manager, CL 28, in March 2002; (6) denial of promotion to Manager for Recruiting, Professional Development and Training, CL 30, in January 2002; (7) denial of training opportunities until June 2001; (8) denial of promotion in February 2002 when remaining support staff received promotions; (9) racial and ethnic discrimination evidenced by failure to promote Petitioner; (10) racial and ethnic discrimination evidenced by derogatory and demeaning statements; (11) age discrimination evidenced by promotion of younger employees; (12) disparate treatment in application of Family Medical Leave Act

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<sup>1</sup> The numbers in the parenthesis coincide with the numbered claims in Petitioner's July 9, complaint.



## APPENDIX 8-C

("FMLA"); and retaliation and hostile work environment as a result of filing the initial complaint on March 12, 2002.<sup>2</sup> [Complaint, dated July 9, 2002 ("7/09/02 Complaint"), ¶ I. E.]. In this regard, Petitioner seeks promotion to the vacated Personnel Manager position, backpay and benefits compensation equivalent to the time she allegedly should have held higher classified positions, early retirement without loss of benefits and other remedies. [Id., I. F.]. For the reasons discussed herein, the relief requested by Petitioner must be denied.

### EDR Proceedings

On March 12, 2002, Petitioner filed a complaint pursuant to Chapter VII, § 5, of the EDR Plan. [3/12/02 Complaint]. Petitioner alleged discrimination, beginning in 1996, by the Senior Staff Attorney, Naomi Godfrey, and by Karen Sinyard, who is currently the Administrative Manager. [Id.]. The parties proceeded through the EDR process, first failing to resolve the matter at the consultation stage. [Respondent Ex. 12]. On April 12, 2002, Petitioner requested mediation pursuant to Chapter VIII, § 6, of the EDR Plan. [Request for Mediation, dated April 12, 2002]. The attempt at mediation was unsuccessful. [July 1, 2002, letter from Gary F. Canner].

Following the mediation stage of the EDR process, on July 9, 2002, Petitioner, pursuant to Chapter VII, § 7, of the EDR Plan, requested a hearing and filed the instant complaint setting forth the claims of discrimination and

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<sup>2</sup> There are no allegations based on color or religion in the July 9, 2002, complaint, and Petitioner presented no evidence at the evidentiary hearing relating to any claim of discrimination based on color or religion. The judicial officer notes that Petitioner's request for mediation did not include religion as a basis for the alleged discriminatory conduct. [Request for Mediation, dated April 12, 2002]. The judicial officer finds that Petitioner has abandoned any claims of discrimination based on these factors.

## APPENDIX 8-C

seeking the relief sought *supra*. [7/9/02 Complaint]. Pursuant to Chapter VII, § 7B(1), of the EDR Plan, the Chief Judge designated the undersigned as the presiding judicial officer in this matter. [Order dated August 15, 2002]. The undersigned judicial officer conducted a hearing on Petitioner's claims on September 25 and 26, 2002.<sup>3</sup>

### Background Facts

The facts set forth herein are based on the evidence submitted at the evidentiary hearing and during the EDR process which the undersigned finds admissible and credible. In this regard, at the evidentiary hearing, Petitioner submitted (5) bound volumes of materials most of which had not been previously provided to Respondent Staff Attorneys' Office nor previously made part of the dispute resolution process. [Petitioner's Ex. 5, 6, 7, 8, and 12]. As permitted by the undersigned, counsel for Respondent submitted a written objection to many of the items in the exhibits on the grounds of timeliness, hearsay, and relevancy. [Letter dated October 10, 2002]. A substantial number of those objections are well-stated. For example, many of the documents in the exhibits appear to be statements of Petitioner offered to support her claims which are not sworn nor subject to cross-examination by Respondent. Additionally, much of this material lacks adequate foundation and support in the record. [See, as representative sampling, Ex. 6: 1. Education and Work History; §§ 1 & 1A-Claim 1, Exhibit 2 Duties and Responsibilities of Long-term SAO support staff; II. Claims alleged Under Chapter II, EEO and Anti-Discrimination Rights; Ex. 8; Chapter III Family and Medical Leave Rights A. Facts and Discussion; Chapter VII. Dispute Resolution Procedures A. Facts and Discussion]. Other materials in the exhibits apparently intended to be summary charts based on Petitioner's examination of various personnel records of Staff

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<sup>3</sup> The hearing was postponed on the request of Petitioner with the consent of Respondent. [Consent Order, entered September 5, 2002].

## APPENDIX 8-C

Attorneys' Office employees. These materials lack foundation, were not subject to cross-examination, and constitute hearsay. [See, representative sampling, Ex 5: §§ 1 & 1A - Claims 8 & 10, Exhibits 9 and 10; Exh. 6: §§ 1 & 1A - Claim 2, Exhibit 3]. Many other items included are simply not relevant to the claims presented by Petitioner. [See, as representative sampling, Ex. 5: §§ 1 & 1A Claims 8 & 10, Exhibit 9; Ex. 7: § 6C-Claims 3, 5, 7, Exhibit 6]. Respondent also correctly identifies many of the materials contained in these exhibits as pertaining to claims which are not timely under the EDR Plan. The issue will be addressed *infra*. Therefore, unless specifically cited herein, the contents of Petitioner's Exhibits 5 through 8, to the extent objected to by Respondent, will not be relied on by the judicial officer in reaching the final decision.

Petitioner Evelyn Johnson, who is Asian and was age fifty (50) at the time of the evidentiary hearing, was born and raised in the Republic of the Philippines. [Transcript Evidentiary Hearing ("Tr.") at 6]. Petitioner is a naturalized United States citizen. [Id.]. In 1989, Petitioner transferred from the Veterans Administration to the Eleventh Circuit Court of Appeals Staff Attorneys' Office as a court secretary. [Tr. at 8]. As of 1994, Naomi Godfrey has been Petitioner's supervisor. Ms. Godfrey remained in that position through the date of the evidentiary hearing. [Tr. at 10, 159-60]. In 1995, three (3) of the five (5) employees serving as support staff, including Petitioner, received a promotion.<sup>4</sup>

Petitioner was promoted from a JSP-7 to a JSP-8 assuming the position of Secretary to the Senior Staff Attorney; however, her duties remained basically those of a court secretary. [Tr. at 12-13]. If petitioner performed successfully at the JSP-8 level, Ms. Godfrey had advised

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<sup>4</sup> Throughout her service in the Staff Attorneys' Office, Petitioner has been the only member of the support staff employee who is Asian. [Tr. at 11, 34].

## APPENDIX 8-C

Petitioner that she would be promoted to a JSP-9 in a year. [Tr. at 12, 231-32].

Shortly after Petitioner's promotion, the court pay system converted from the JSP to a new classification called Classification Pay Schedule ("CPS"), and all employees were placed in a new classification level with pay guaranteed at least their current level. [Tr. at 16-17, 230]. Petitioner was converted from a JSP-8 step 4 to a CPS Classification Level ("CL") 25/25 which was equivalent to a JSP-9 Step 1. [Tr. at 17, 230]. In July-August 1996, Petitioner was given an increase to a CL 25/29 which would have been a JSP-9 Step 3.<sup>5</sup> [Tr. at 230]. Thereafter, Petitioner received cost of living

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<sup>5</sup> Although not designated a promotion under the new classification system, this increase provided Petitioner with the same salary as she would have received with the "promised" promotion under the JSP system. [Tr. at 231-33].

**[Petitioner's Note: The undersigned judicial officer incorrectly interpreted how promotion works in both JSP and CPS CL system. Petitioner's was relying on her own knowledge and experience due to the fact that this was part of Petitioner's duties while employed at the Staff Attorneys' Office. First, under the old JSP system, an employee whose grade was JSP 8-4, when promoted, the new grade would be JSP 9-3. The annual new salary amount after promotion would be determined through the most current salary schedule furnished by the Administrative Office of the U.S. Courts.**

Second, after the courtwide salary system conversion in February 1996, Petitioner's grade fell under the next higher grade (if based on the old system) due to the pay-banding of three grades from the old JSP system based on her annual salary amount.

The new CPS CL system, however, was comprised and banded together, e.g. JSP 7, 8, & 9, including the step, i.e., step 1, 2, 3, et al. The undersigned incorrectly interpreted the "promised" promotion because Petitioner only received a salary step increase or within-grade increase, not a promotion. This is not "the same salary as [Petitioner] would have received with the 'promised' promotion under the under the JSP system." [See, Fn 5 above].

In the new pay system, Petitioner received an increase from CL

## APPENDIX 8-C

and within-grade pay increases in accordance with the pay regulations.<sup>6</sup> [Tr. at 17].

In March 1999, following the retirement of Toni Mason (the Budget Analyst for the Staff Attorneys' Office), Ms. Godfrey decided not to fill that position but to delegate to the remaining support staff positions the duties Ms.

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25/25 to CL 25/29, a one year step increase, equivalent to JSP 9-2. In using the old pay system, if Petitioner was promoted from JSP 8-4, the resulting grade would be JSP 9-3. Under the Guide to Judiciary Policies and Procedures (HR Guide), a promotion, whether using the old or new pay system, it means going up to the next higher grade and its equivalent step, based on the annual salary. Likewise, had the Petitioner received the appropriate promotion to CL 26/25 rather than CL 25/25 to CL 25/29, it means Petitioner only received annual step increase. "Under no circumstance that when an employee is 'promoted' should receive less than 106% of the annual salary." [See, Appendix G, Salary computations; HR Guide, App. F-10, G].

<sup>6</sup> During her testimony, Petitioner referred to a chart that she stated she prepared from her personnel records. According to Petitioner, the chart summarized her grade and pay she received during her employment with the Staff Attorneys' Office. [Tr. at 19]. In the bound volumes submitted at the hearing, there is a chart labeled Evelyn Johnson which is apparently, although not specifically identified as such, the chart referred to by Petitioner. That chart indicates that Petitioner consistently received increases within her grade, from CL 25/25 in February 1996, to CL 25/29 in July 1996, up to CL 25/45 in August 2001. Her salary increased from \$30, 398 in February 1996 to \$42, 154, in August 2001. [Petitioner's Ex. 5: §§ 1 & 1A -Claims 8 & 10, Exhibit 9 SAO Employment and Pay History 9/25/02 Evelyn Johnson].

[Petitioner's Note: As Petitioner alleged in her complaint of disparate treatment due to non promotion, Petitioner did not receive the "promised" promotion substantiated by the Exhibits mentioned herein since 1995. Other newly hired employees (whites and blacks, male and females who were younger than the Petitioner and hired in 1997, 2000, 2001) with less responsibilities than Petitioner, received one or several promotions between 1998 to 2002. At the same time, the other most senior support staff (Karen Sinyard) received six (6) promotions during the time frame at issue. The chart referred to by the undersigned showed not only the disparity in pay among support staff, but also Respondent's favoritism in giving promotions].



## APPENDIX 8-C

Mason had been performing. [Tr. at 25-26]. Ms. Godfrey advised the support personnel the filling the remaining support staff positions in 1999 that, based on these additional duties, she intended to increase classification for these positions on order to promote the support staff. [Tr. at 26-28, 225-226]. Petitioner who had been performing a variety of duties, assumed personnel duties, some of the training duties, and the administrative paperwork associated with recruiting. [Tr. at 27-28]. Petitioner was not trained beyond information provided by Ms. Mason before she retired, in handling the personnel duties until June 2001. <sup>7</sup> [Tr. at 28, 34-35]. [See Appendix F-1].

In mid-1999, Petitioner claims that, after the title for the position previously held by Ms. Mason was reclassified as Office Manager, at a CL 28, the position was assumed by Karen Sinyard, another support employee. [Tr. 28-30]. Also in 1999, the position which had been held by Ms. Sinyard, Automation Specialist, a CL 27, was then reclassified [downgraded] to an Administrative Case Manager, a CL 25. A black male, James Hale, who had been hired in July 1997, assumed that new position. <sup>8</sup> [Tr. at 30-33].

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<sup>7</sup> Petitioner was unable to qualify for the annual training offered for personnel specialists, specifically those serving as managers in personnel departments, due to her official classification as a court secretary. [Tr. 36-38]. As was true of all the support staff, neither her job description nor title was changed after Ms. Mason retired. [Tr. At 37-38]. According to Petitioner, she advised Ms. Godfrey of the reason she could not receive the training, and Ms. Godfrey advised Petitioner to work on classifying her position to incorporate the additional duties and to increase her CL grade. [Tr. At 38; Petitioner's Ex. 5: §§ 1 & 1A-Claims 8 & 10, Exhibit 7(a)]. In September 2001, Petitioner's position was reclassified to Human Resources Coordinator, CL 26/40, with a pay of \$44,780. [Tr. At 39; Respondent's Ex. 8].

<sup>8</sup> When Mr. Hale was hired, he was the receptionist at either CL 23 or 24. [James Hale was a CL 23 and was promoted to secretary in 1998]. After a period of time and having performed additional duties, he was promoted to a court secretary position which was a grade increase. [Tr. At 132-34, 228-29]. In 1999, at the request of Ms. Godfrey and Ms.

## APPENDIX 8-C

During 2001, following a large turn-over of staff attorneys, a Self-Study was conducted by the employees in the Staff Attorneys' Office to attempt to identify staffing issues and to propose solutions for those problems. [Tr. at 40-41, 161-62]. Petitioner served on the Recruitment and Retention Committee. [Tr. at 41]. As previously noted, Petitioner was performing duties related to the recruitment of new personnel, including attorneys. [Tr. at 28]. Petitioner was not involved in the actual recruitment of attorneys, that is, seeking out qualified lawyers for vacant positions, reviewing resumes for qualifications, interviewing applicants for the staff attorney positions, checking references, negotiating salaries, and making hiring decisions. Up to January 2002, those tasks were performed by Ms. Godfrey and supervisory attorneys. [Tr. at 150-51, 63]. Petitioner handled the paperwork associated with recruitment, that is verifying that applicants submitted the requested information, setting up interviews at the direction of Ms. Godfrey, sending out form letters, and similar administrative duties. [Tr. at 171-72]. As a result of the Self-Study, it was recommended that one (1) individual handle the recruitment duties currently being performed by Ms. Godfrey and other supervisory attorneys. [Tr. at 44, 150, 167, 201-02]. The Self-Study also recommended removing from support staff who held the position of court secretary many of the duties associated with proofing the work of staff attorneys. [Pet.'s Note: *This sentence is misleading. There were four (4) support staff NOT one "court secretary," whose more than 50% of duties were removed (proofreading and cite checking of cases) from the review process of cases before they were sent to the clerk's office. See Appendix F-1, Naomi Godfrey's e-mail to all staff on November 1, 2001.*] [Tr. at 58]. All of the Self-Study recommendations were subject to review and

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Sinyard, Mr. Hale began assuming some of Ms. Sinyard former case management duties. Mr. Hale handled those duties for a period of time and was subsequently promoted to the CL 25 position. [Tr. 124-27]. Mr. currently holds the position and was unable to state whether or not he received any increase in grade or pay during 2002. [Tr. at 127-28].



## APPENDIX 8-C

approval by Ms. Godfrey and the judges on the Court of Appeals. [Tr. at 164-65, 192]. It was determined that the positions of Manager for Recruiting, Professional Development and Training and of Personnel Manager would be created. [Tr. at 167]. *[Pet.'s Note: This position was supposedly a new position. But the management had not created a position description which identifies all duties and responsibilities of this particular position. Soon after this person (Sara Gilibert) got on board, Naomi Godfrey ordered Petitioner to make lists of all of her duties and responsibilities, including minute details and steps on how everything was done, then give the lists to Sara Gilibert. From those lists Petitioner gave to Sara Gilibert, her duties emerged. Furthermore, Naomi Godfrey also ordered Petitioner to train Jackie Williams on the clerical duties, so she could be Petitioner's back-up on her absence. These two people now took over Petitioner's position].*

In November 2001, the recruitment manager position was advertised twice. The first time, Petitioner did not apply as she had assumed that the position would require a legal degree. [Tr. at 47-48]. The position description did not require such a degree; therefore, when it was re-advertised, Petitioner applied. [Tr. at 48, 169-70; Petitioner's Ex. 1]. Ms. Godfrey was seeking an individual who could assume, immediately, the duties currently held by herself and the supervisory staff attorneys. [Tr. at 168, 172]. She was not seeking someone to handle the administrative duties being performed by Petitioner, and as Petitioner never performed the duties intended to be handled by the recruitment manager, Ms. Godfrey did not believe Petitioner was qualified for the position. <sup>9</sup> [Tr. at 171-72, 213-14, 221-22]. Ms. Godfrey, in consultation with Mr. Norman Zoller, the Circuit Executive, selected an attorney, Ms. Sara Gilibert, a white female for the position, classified as a CL 30/20, and

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<sup>9</sup> Petitioner continues to handle the same administrative duties with respect to recruitment. [Tr. At 154].

## APPENDIX 8-C

Ms. Gilibert began working on January 22, 2002. <sup>10</sup> [Tr. at 169; Document entitled: Request for Personnel Action, submitted to the judicial officer by counsel for Respondent with consent of counsel for Petitioner on October 10, 2002, marked as Respondent's Ex. 13].

As stated, as a result of the Self-Study, a position for Personnel Manager was also created. The position had not been filled as of the date of the evidentiary hearing. [Tr. at 53-54]. *[Pet.'s Note: The reason given by Naomi Godfrey and Norman Zoller why this position was the only position not filled was not credible. All positions and promotions recommended by the self-study executive committee to the court were budgeted and had taken place other than this particular position. Budget was not the issue because in April 2002, Karen Sinyard was again promoted to CL 29. Whatever Naomi Godfrey says, the personnel manager position did not exist anymore because the position was removed from the office organizational chart.]* The position remains open because there are not sufficient funds in the budget, given the directives from judges on the Court of Appeals regarding staffing requirements, to fill the Personnel Manager position. [Tr. at 203, 247-48]. Ms. Godfrey, in discussing the position with Petitioner, advised her of that fact in explaining why the position had not been filled. <sup>11</sup> [Tr. at 55-56]. Ms. Godfrey advised Petitioner that

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<sup>10</sup> Ms. Godfrey had previously advised Petitioner that she would not be hired for the management position. [Tr. At 209].

<sup>11</sup> Petitioner apparently expressed to Mr. Zoller her concerns about the vacant Personnel Manager position and relayed to Ms. Godfrey's explanation that the budget did not permit the position to be filled at that time. Mr. Zoller responded to Petitioner by e-mail confirming that Ms. Godfrey was correct about the lack of budgetary funds for positions. [Petitioner's Ex. 5: §§ 1 & 1A - Claims 8 & 10, Exhibit 1].

## APPENDIX 8-C

when the position was advertised, Petitioner could apply.<sup>12</sup> [Tr. at 87].

Ms. Godfrey also implemented the recommendation to eliminate the proofreading and cite-checking duties from the remaining support staff positions. That process began in November 2001. [Tr. at 58-60]. As noted, in September 2001, Petitioner's position was reclassified, and she received a promotion based on the responsibilities she assumed in 1999, however, were placed on hold due to the Self-Study recommendation to eliminate most of the job duties for court secretary. Ms. Godfrey was not sure if those positions would be eliminated. [Tr. 178-80]. *[Pet.'s Note: This was the most ridiculous story Naomi Godfrey had fabricated. First, in 1999, the notion for any SAO self-study did not exist. The reason why the self-study precipitated in April - June 2001, there was an extraordinary turmoil in the SAO. About 30 staff attorneys left, which most of them left before their term was up due to morale issue with the management, and some staff attorneys wrote complaint letters to Norman Zoller. Second, reclassification of Petitioner's job was already in the works in May (furnished evidence was part of the record). Paperwork was again held back and sat on Naomi Godfrey's desk corner for some time. She finally signed the paperwork before she appeared en banc to the judges to explain herself regarding morale issue in the SAO. Last, three out of four employees were not hired until 2000 and 2001 (again, furnished evidence was part of the record), and as Naomi Godfrey testified above, "Self-Study recommendation to eliminate most of the job duties for court secretaries/*

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<sup>12</sup> Petitioner believes that the Personnel Manager position has been eliminated because an employee staffing chart that was distributed recently no longer provides a space for "Personnel Manager." [Tr. At 87; Petitioner's Ex. 4]. However, Ms. Godfrey testified that she did not prepare the chart or direct that the chart eliminate the position nor, in fact, had the position been eliminated. The chart referred to by Petitioner simply provides a listing of current employees with telephone number. [Tr. At 248-50].

## APPENDIX 8-C

(proofing and cite checking of memos produced by attorneys). Two of the secretaries were black and two were white. Again, Naomi Godfrey fabricated more story, and conspired secretly with Karen Sinyard (she was promoted in April 2002 as well) created inflated job descriptions, with duties that came from nowhere and were never performed at the time (as in the case of Jackie Williams, F/B, the other employee who replaced Petitioner) for those staff, and reclassified those positions because "Ms. Godfrey was not sure if those positions would be eliminated." After sending an e-mail to all staff in November 1, 2001, that most of the secretaries' duties will be eliminated, those employees' were given inflated and falsified job descriptions, and were promoted in February 2002. "Ms. Godfrey also implemented the recommendation to eliminate the proofreading and cite-checking duties from the remaining support staff positions. That process began in November 2001. [Tr. at 58-60]." Of course, Petitioner learned about all these after-the-fact, but supported everything with substantial evidence on the record. Naomi Godfrey offered no supporting evidence to rebut all of Petitioner's allegations.]. However, in consultation with the judges on the Court of Appeals, it was decided not to eliminate the positions; therefore, the remaining support staff positions were reclassified and promotions were awarded on February 11, 2002. <sup>13</sup> [Tr. at 61-62, 180-81, 206, 226-27]. Petitioner was not promoted

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<sup>13</sup> The employees receiving these promotions included Jackie Williams and Belinda Hunt. Ms. Williams, a black female, was hired as the receptionist in 1999 and then assumed a position as a court secretary. [Tr. at 132]. In February, 2002, her position was reclassified and increased [promoted] in grade to a personnel technician, a CL 25. [Id.] Ms. Hunt, a black, female with a paralegal degree, was hired in 1999 as a court secretary at a CL 24. In February 2002, her job was reclassified with a grade increase [promoted to CL 25, and she was assigned some new duties. [Tr. at 141-43]. Several of the duties for the position, such as library work and data entry, Ms. Hunt had been performing for a year before receiving the grade increase. [Tr. At 143-44].

## APPENDIX 8-C

again at this time. <sup>14</sup> [Tr. at 63]. Ms. Godfrey explained the ones promot[ed] were ones promised when the support staff assumed the duties previously held by Ms. Mason. Petitioner received her promotion as a reclassification of position in September 2001, before the remaining support staff positions were reclassified. [Tr. 178-81, 224-25; Petitioner's Ex. 5: §§ 1 & 1A-Claims 8 & 10, Exhibit 7]. Petitioner testified, when asked why she believed that she was not promoted in February 2002, "I felt like, you know, she is discriminatory against me because I don't really know why because I have been doing, I think, a good job since 1995, no performance problems, and it is my Asian, you know, background that I am not being promoted and all these people are getting promoted, and it is my contention that is s because of that." [Tr. at 66].

According to Petitioner, Ms. Godfrey and Ms. Sinyard also made remarks that Petitioner considered to be discriminatory. According to Petitioner, Ms. Godfrey made remarks to Petitioner regarding her stylish and expensive appearing clothing and jewelry and expressed that Petitioner to have money. Ms. Sinyard, on a couple of occasions state that she did not know why Petitioner was there, that is, at the Staff Attorneys' Office, because "we all know that she's loaded, you know." [Tr. at 83]. After Ms. Godfrey observed Petitioner driving her automobile one afternoon and waved

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<sup>14</sup> Plaintiff testified at the hearing that she first learned of these promotions when a personnel chart was distributed to the staff on March 1, 2002. [Tr. at 63-64]. She further testified, however, that, after seeing the chart, she discussed the promotions with Ms. Godfrey in an exchange of e-mails inquiring why she, Petitioner, had not been promoted at the same time. [Tr. at 64]. The date on those e-mails is January 22, and 23, indicating that Petitioner was aware of the proposed reclassifications prior to the chart being distributed. [Petitioner's Ex. 5: §§ 1 & 1A - Claims 8 & 10, Exhibit 7]. [*Pet.'s Note: This exchange of e-mails took place because Petitioner inquired with Karen Sinyard about the rumored "upgrade" of support staff positions. Petitioner was not aware what was going on about this issue, was never approached, and deliberately excluded Petitioner about reclassifications of support staffs' plan.*].



## APPENDIX 8-C

at her, Ms. Godfrey commented about the car at work, asked her husband to ask Petitioner about the car, and eventually bought a similar model car. Petitioner stated that she did not know how to interpret Ms. Godfrey's actions. [Tr. 276-78]. Also, at an orientation session for new attorneys, when Petitioner was introducing herself, Ms. Godfrey asked her to tell the attorneys about her antique business, which Petitioner testified she did not feel was proper. [Tr. 277-78]. Petitioner interpreted these remarks were "unwarranted" and there "underlying motive[s]" in the remarks directed to her Asian heritage. [Tr. 275-78]. One time, Ms. Sinyard also stated referring to which Petitioner's desk was located, "Well people like her should be watched." [Tr. at 84]. Petitioner also claimed that in 2001, Ms. Godfrey made a comment about a female attorney of Asian descent who was leaving the staff attorney to the effect "that Asians just don't write well." [Tr. at 91]. And in either January or February 2002, one of the supervising attorneys stated to Petitioner, in Ms. Sinyard's presence, that Petitioner owed him lunch because "she's loaded, you know, and Karen Sinyard again said, yeah, we all know she's loaded." <sup>15</sup> [Tr. at 85-85].

Ms. Godfrey testified that she was "kind of materialistic" and that, "intended as compliment[.]" she commented from time to time about how nicely Petitioner dressed and asked where Petitioner found such nice clothes. [Tr. at 182]. Ms. Godfrey testified that Petitioner indicated that she was knowledgeable about finances and investments. <sup>16</sup> [Tr. at 182-83]. Ms. Godfrey denied making derogatory comment about the writing ability of any attorney of Asian descent. [Tr. at 183].

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<sup>15</sup> Excepting this last comment which was made in either January or February 2002, all of the other comments were made prior to 2002. [Tr. At 82-91, 275-78].

<sup>16</sup> Petitioner did have a degree in business and a background in finance. [Tr. At 6-7].

## APPENDIX 8-C

Petitioner filed her initial complaint seeking consultation under the EDR Plan on March 12, 2002. [3/12/02 Complaint]. On March 21, 2002, Petitioner requested that Ms. Godfrey allow her to participate in training being provided to court human resources personnel. [Petitioner's Ex. 11 and 8: Cha VII § 2A-Claim 13, Exhibits 2 and 3]. In response to the request, by a March 22, 2002, e-mail Ms. Godfrey asked for more information about the training which had an application date of March 25, 2002. Ms. Godfrey also requested that Petitioner comply with a request made by Ms. Gilibert to provide a summary of her daily work. [Tr. 238-39; Petitioner's Ex. 8: Cha VII § 2A-Claim 13, Exhibits 2 and 3]. As Ms. Gilibert was new to the office and because the section in which she, Petitioner, and a third support staff employee, Jackie Williams, were working was newly created, Ms. Gilibert was seeking information about Petitioner's daily work. [Tr. at 174-75, 239]. Petitioner had also been asked, at the time Ms. Gilibert arrived in January 2002, to provide an overview of the duties and responsibilities for personnel, recruitment, and related work to allow Ms. Gilibert to determine how to delegate duties among herself, Petitioner, and Ms. Williams. Petitioner had not yet provided the information.<sup>17</sup> [Tr. at 174-75, 238]. Petitioner responded by e-mail on March 22 indicating that she would provide more information on the training and asking if anyone else was being directed to provide a summary of daily work. [Petitioner's Ex. 8: Cha VII § 2A-Claim 13, Exhibits 2 and 3]. That same day, Ms. Godfrey responded, explaining why Petitioner was asked for the information and stating that the information had been previously requested, but the Petitioner had failed to respond. Ms. Godfrey advised Petitioner that no one else

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<sup>17</sup> Petitioner acknowledged that this request had been made and that she had been made and she had not yet complied, although she did not understand that she had been given a deadline. She complied with the request soon after receiving the e-mails from Ms. Godfrey. [Tr. At 271-73]. [See Pet.'s Note on page 11 above].



## APPENDIX 8-C

was asked to provide the daily summary.<sup>18</sup> [Tr. at 174-76; Petitioner's Ex. 8: Cha VII § 2A-Claim 13, Exhibits 2 and 3]. On March 25, 2002, Petitioner e-mailed Ms. Godfrey acknowledging that Ms. Gilibert had requested a review of certain materials and a report from Petitioner and accusing Ms. Godfrey of retaliating against Petitioner and of creating a hostile work environment. Petitioner provided no additional information about the training. [Petitioner's Ex. 8: Cha VII § 2A —Claim 13, Exhibits 2 and 3].

On March 26, 2002, by e-mail, Petitioner requested and was granted by Ms. Godfrey administrative leave (apparently involving her EDR complaint). In her e-mail reply that day, Ms. Godfrey also asked Petitioner about Petitioner's prior inquiry about training for which the March 25, 2002, application deadline had passed. [Petitioner's Ex. 8: Cha VII § 2A — Claim 13, Exhibit 3]. When Petitioner provided more information about the training on March 27 and 28, Ms. Godfrey responded that she had assumed Petitioner was no longer interested in participating as the deadline had already passed without Petitioner providing the necessary information. [Tr. at 77, 244-45; Petitioner's Ex. 8: Cha VII § A — Claim 13, Exhibit 3]. Ultimately, Petitioner provided the daily summary information as requested by Ms. Godfrey and Ms. Gilibert and, at the end of March, subsequently provided the other information previously requested by Ms. Gilibert. [Petitioner's Ex. 10].

In April 2002, when Petitioner's mother became ill, Petitioner requested to use sick leave, in lieu of annual leave,

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<sup>18</sup> Ms. Godfrey testified that, because Ms. Williams was new to her position and because Ms. Gilibert was assigning Ms. Williams specific tasks, there was no question what Ms. Williams was doing each day. [Tr. At 176]. However, Ms. Gilibert was not aware of what tasks Petitioner was handling nor the amount of time required for her to complete those tasks. [Id.]. [Pet.'s Note: If Sara Gilibert was assigning tasks to Jackie Williams, how did Sara Gilibert know what tasks to delegate if Petitioner did not give Sara Gilibert that information? See Pet.'s Note on page 11].

## APPENDIX 8-C

in order to travel to California and be with her mother. Petitioner's request was granted, and she used sick leave for the period April 16 through 19, 2002. [Tr. at 68-70, 73]. She also was granted use of sick leave for May 2 and 3, 2002. [Tr. at 73]. Petitioner again requested use of sick leave to return to California to be with her mother for the period May 6 through 16, 2002, and when her mother passed away, to handle funeral arrangements for the period May 28 through 31, 2002. [Tr. at 68-69, 73]. However, because Petitioner's sick leave balance would fall below eighty (80) hours with additional sick leave being taken, Petitioner was advised by Ms. Sinyard that annual leave must be charged for these days off from work.<sup>19</sup> [Tr. at 70]. Petitioner felt that her treatment by Ms. Godfrey, Ms. Sinyard, and others while her mother was sick and after she passed away was mean and unsympathetic. [Tr. at 80-82]. Petitioner testified that, when she returned from one of her trips to California, her computer was "acting strangely" and that it appeared that someone had accessed her computer during her absence and deleted some files. According to Petitioner, she was unable to renew certain prescriptions on line because of the unauthorized access. [Tr. at 74-75].

Additional facts will be set forth as necessary for discussion of Petitioner's claims.

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<sup>19</sup> The leave policy for the Court of Appeals provides in pertinent part:

Full-time\* employees may use 40 hours of accrued sick leave in each leave year to provide care for a family member as a result of physical or mental illness . . . or other condition that, if an employee had such a condition, would justify the use of sick leave by such an employee. This amount of sick leave also may be used to make arrangements necessitated by the death of a family member or to attend the funeral of a family member. An additional 64 hours of sick leave may be used for these purposes in a leave year by a full-time\* employee but only to the extent the use of such additional hours does not cause the amount of sick leave to the employee's credit to fall below 80 hours. . . .

[Respondent's Ex. 5].

## APPENDIX 8-C

### Discussion

The EDR Plan in the instant case provides rights, protections, and procedures for employees of the Eleventh Circuit Court of Appeals. EDR Plan Chapter I, § 1.<sup>20</sup> In reaching a decision under the EDR Plan, the designated judicial officer "shall be guided by judicial and administrative decisions under the laws related to Chapters II through VII of [the EDR] Plan. . . ." EDR Plan, Chapter VII, § 7C(2)(e). In this regard, the EDR Plan sets forth such laws and the rights protected.

Chapter II of the Plan prohibits "[d]iscrimination against employees based on race, color, religion, sex (including sexual harassment, national origin, age (at least 40 years of age at the time of the alleged discrimination), or disability. . . ." EDR Plan Chapter II, § 1. And, the Plan provides that "[t]he Court, any court unit executive, or their assistants, shall not retaliate against, coerce or interfere with a complainant or anyone participating in the filing and processing of a complaint." Chapter VII, § 2A.

As noted, Petitioner asserts she was discriminated against based on her race, national origin, sex, and age during her employment with the Staff Attorneys' Office as evidenced by the failure to grant her promotions, by the promotions of other employees, by the denial of training, and by the comments made to and about her. [7/9/02 Complaint]. Petitioner further claims that the personnel in the Staff Attorneys' Office retaliated against her following the filing of her complaint in March 2002. [Id.].

#### 1. Timeliness of Claims

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<sup>20</sup> "Although intended to be the exclusive remedy for employees with respect to the rights and protections afforded," the EDR plan does not apply to "complaints (commonly known as grievances) relating to dissatisfactions with terms and conditions of employment which do not involve the rights and protections afforded under [the] Plan. . . ." EDR Plan, Chapter I, § 1.

## APPENDIX 8-C

The EDR Plan provides that a claim of discrimination is initiated with a request for consultation. EDR Plan, Chapter VII, § 5A. The request for consultation "must be made in writing on the form attached to this Plan as Form 1 (Exhibit D1) . . . and . . . must be made within 30 days of the alleged violation or within 30 days of the time the employee becomes aware of the alleged violations." EDR Plan, Chapter VII, §§ 5B(2) and (3). Petitioner initiated the process under the EDR Plan with the filing of the formal complaint on March 12, 2002. [3/12/02 Complaint]. Therefore, in accordance with the Plan, all claims of which Petitioner was or should have been aware before February 11, 2002, are not timely and subject to dismissal. See EDR Plan, Chapter VII, § 7B(2) ("After notice to the complainant and an opportunity to respond, the . . . designated judicial officer may dismiss in writing any complaint that is found to be . . . untimely. . . ."). <sup>21</sup>

As stated, the running of the EDR Plan's thirty (30) day statute of limitations is triggered by the occurrence of the alleged violation, whichever occurs last. EDR Plan, Chapter VII, §§ 5B(2) and (3). In most situations, the date of occurrence of the discriminatory practice and employee's awareness of the challenged action is fairly evident and coincide with each other, such as in actions involving pay, hiring, promotions, termination, and the like. In these cases, to determine at what point in time a discriminatory employment action occurs, "[t]he limitations period begins to run 'date on which the adverse employment action is communicated to the plaintiff.'" Peanick v. Morris, 96 F.3d 316, 321 (8<sup>th</sup> Cir. 1996). The discriminatory practice occurs on that date, and if notified, the employee clearly is aware of

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<sup>21</sup> Counsel for Petitioner was advised during the first telephone conference with the undersigned regarding Petitioner's claims for relief that the undersigned believed a number of Petitioner's claims were untimely under the EDR Plan. Petitioner and her counsel were again advised of this fact at the commencement of the evidentiary hearing and were informed that the undersigned would determine the issue of timeliness in ruling on all of Petitioner's claims. [Tr. At 4-5].

## APPENDIX 8-C

the potentially discriminatory act. In this regard, if an employee is advised on a date certain that an employment action or decision has been made which will take effect at some point later in time, it is the date of notice to the employee that controls accrual of the claim. See Martin v. Southwestern Virginia Gas Company, 135 F.3d 307, 310 (4<sup>th</sup> Cir. 1998) (finding that unlawful employment practice accrues on the date the employer informs employee of challenged employment decision, "not on the date that the effects of the notice are ultimately felt"); Wislocki-Goin v. Mears, 831 F.2d 1374, 1380-81 (7<sup>th</sup> Cir. 1987) (on date that employee was informed that she did not receive job but that a male was selected, employee had sufficient facts to be placed on notice of potentially discriminatory conduct by employer, and her claim accrued for running of the statute of limitations).

In some cases, including those involving administrative proceedings, it may not be evident when the employee had sufficient notice of the discriminatory practice. In Christison v. Alvarez, 31 F.Supp. 2d 787 (D. Mont. 1999), the court discussed the type of notice required to trigger the forty-five (45) day statute of limitation within which a federal employee must bring a claim of discrimination to the attention of the EEO counselor. See 29 C.F.R. § 1614.105(a).

<sup>22</sup> The court found the question to be answered in making

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<sup>22</sup> 29 C.F.R. § 1614.105(a) provides in pertinent part:

(a)(1) An aggrieved person must initiate contact with a Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within 45 days of the effective date of the action.

The EDR Plan's limitation period does not contain the alternative triggering date involving a "personnel action." The federal regulation also contains a provision for delaying commencement of the limitations period if the employee shows that he or she did not know and reasonably should have known of the discriminatory practice, which is similar to the EDR Plan's language. See 29 C.F.R. § 1614.105(a)(2).



## APPENDIX 8-C

this determination was "whether sufficient facts support a charge of discrimination would have been apparent to a similarly situated person with a reasonably prudent regard for his [or her] rights." Christison, 31 F.Supp.2d at 792. Thus, when an employee has strong suspicions of discriminatory conduct, whether or not based on information sufficient to prevail ultimately at trial, "[l]ike all federal employees, he [or she is] required to take his suspicions and his [or her] complaint to an EEO counselor to commence an investigation and possibly to resolve the dispute informally." Id.; see also Baker v. Peters, 145 F. Supp. 2d 1251, 1255 (M.D. Ala. 2000) ("[T]he limitations period does not begin to run until the employee becomes or should have become aware of the alleged discrimination."); Dixon v. Dalton, 985 F.Supp. 584, 586 (E.D. Pa. 1997) ("A claim accrues in a federal cause of action upon awareness of the actual injury, not upon awareness that this injury constitutes a legal wrong.") (citation omitted). The undersigned will analyze the timeliness of Petitioner's claims within this framework.

For the majority of Petitioner's claims, there is no dispute in the record that Petitioner had notice of and was clearly aware of the allegedly discriminatory act prior to February 11, 2002. Many of the actions challenged by Petitioner occurred years ago and were, according to Petitioner's testimony, plainly attempts to discriminate against her. Based on the evidence presented, the undersigned finds that the following claims are not timely under the EDR Plan and are subject to dismissal: (1) denial of a promotion Petitioner alleges she was promised in 1995 [Tr. at 12-17]; <sup>23</sup> (2) denial of equivalent pay rate for seven (7) months following the conversion from the JSP system to the CPS system in 1996 [Tr. at 17; Petitioner's Ex. 5: §§ 1 & 1A — Claims 8 & 10, Exhibit 9 SAO Employment and Pay History 9/25/02 Evelyn Johnson]; (3) failure to reclassify

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<sup>23</sup> Petitioner received the equivalent of this "promotion" when her grade was increased to CL 25/29 in mid-1996. [Tr. 230-33; Petitioner's Ex. 5: §§ 1 & 1A — Claims 8 & 10, Exhibit 9 SAO Employment and Pay History 9/25/02 Evelyn Johnson].

## APPENDIX 8-C

Petitioner's position based on additional duties assumed in 1999 [Tr. at 25-28] <sup>24</sup> and failure to promote Petitioner to Office Manager, CL 28, in January 2000 [Tr. at 28-30]; (4) failure to promote Petitioner to Automation Specialist, CL 27, in January 2000 [Tr. at 30-33]; <sup>25</sup> (6) denial of promotion to Manager Recruiting, Professional Development and Training, CL 30, in January 2002 [Tr. at 47-48, 209; Respondent's Ex. 13]; and (7) denial of training opportunities until June 2001. [Tr. at 28, 34-35]. [7/9/02 Complaint].

Petitioner also claims that she was discriminated against as evidenced by the promotions received by Mr. Hale, a black male, which raised him to a reclassification level equivalent to Petitioner. <sup>26</sup> [7/9/02 Complaint, Claim 4 (second part)]. She also claims that she was discriminated against in February 2002, when other support staff received promotions but she did not. [7/9/02 Complaint, Claim 8]. These two (2) claims, after dismissal of the previously discussed untimely claims, are the only causes of action remaining which could incorporate Petitioner's claim that she was discriminated against based on her age evidenced by the promotions of younger employees in the office. [7/9/02 Complaint, Claim 11]. Regarding these claims, Petitioner does not allege that she sought the positions awarded to the other support staff in February 2002. Apparently, the classification level of the support staff positions involved in these claims, after the February 2002 promotions or reclassification of positions, were CL 25, one grade less than Petitioner's, or CL 26, the same grade level as Petitioner. [Tr. 124-28, 132, 141-44, 180-81, 206, 226-27]. Petitioner's discrimination claim is that since the members of the

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<sup>24</sup> The reclassification occurred in September 2001. [Tr. At 39, 177-78, 224-25].

<sup>25</sup> The undersigned will address *infra* the second part of claim number 4 which involves the promotions of Mr. Hale.

<sup>26</sup> As Mr. Hale is the only male support staff employee identified by Petitioner, he is apparently the focus of her assertion of gender discrimination.



## APPENDIX 8-C

support staff received a promotion, Petitioner was treated disparately because her position was not reclassified and she was not likewise promoted. [Tr. at 61-65]. *[Pet.'s Note: Yes, it only took Petitioner thirteen and one-half (13 1/2) years to be upgraded to CL 26, while others, e.g., James Hale (M/B) was hired in July 1997, with less experience and had no federal employment background had been promoted three (3) times in 4 1/2 years and his grade equaled the Petitioner's; Jackie Williams (F/B) was promoted twice after three years of employment at the SAO, CL 25, which was a grade lower than Petitioner's, who took over part of Petitioner's duties, the "ministerial duties." See Petitioner's note on page 11.]*

After consideration of the evidence, the undersigned finds that these claims are also untimely. As to the claim involving Mr. Hale, excepting the possible promotion in February 2002, all other employment actions involving pay raises or promotions for Mr. Hale occurred well outside the limitations period. [Tr. at 124, 28, 132-34]. And, Petitioner, in her role handling personnel matters, does not dispute her knowledge of the employment actions at the time they took place. With respect to the reclassification in 2002 for Mr. Hale's position, the only admissible evidence in the record regarding any personnel action within the thirty (30) day window is Petitioner's statement that he was promoted with the other support staff in February 2002. [Tr. at 62]. However, Mr. Hale testified that he did not recall being promoted or receiving a raise in 2002. He clearly stated that he holds the same job title that he received in 1999, that is, Administrative Case Manager. [Tr. at 127-28].

Assuming that Mr. Hale's position was reclassified to a CL 26 in February 2002, when the remaining support staff positions were reclassified, Petitioner's claim regarding all of these position reclassifications, that is, that her position was not similarly reclassified, is untimely. Contrary to Petitioner's testimony at the evidentiary hearing, she apparently notified of the upcoming support staff reclassifications as well as of the fact her position would not

## APPENDIX 8-C

be reclassified in January 2002. [*Pet.'s Note: See Petitioner's note at Fn 14 above.*]

At the hearing, Petitioner testified that she only became aware of the fact that other support staff positions were reclassified when a personnel chart was distributed in March 2002. [Tr. at 63-64]. After receiving the chart, Petitioner testified that she determined that other support staff had been promoted. [Tr. at 64]. She also testified that she discussed her displeasure at not being promoted along with these employees with Ms. Godfrey in an exchange of e-mails. Ms. Godfrey replied to Petitioner that her position had been reclassified in September 2001 based on her job duties and responsibilities and, as Ms. Siryard had already advised Petitioner, she could not receive a higher reclassification level. [Tr. t 64; Petitioner's Ex. 5: §§ 1 & 1A — Claims 8 & 10, Exhibit 7]. The dates on these e-mails between Petitioner and Ms. Godfrey is January 22 and 23, 2002, not in March 2002 as would be the case if events had occurred as Petitioner recounted at the hearing. [Petitioner's ex. 5: §§ 1 & 1A — Claims 8 & 10, Exhibit 7]. [*Pet.'s Note: See Petitioner's note at Fn 14 above.*]

The e-mails clearly indicate that Petitioner was aware, more than thirty (30) days before filing her complaint, that although positions for other members of the support staff would be reclassified, her position would not be reclassified.<sup>27</sup> Thus, in January 2002, Petitioner was notified by management of the decisions form the basis for disparate treatment challenge to these employment actions. See Martin, 135 F.3d at 310 (limitations period runs from

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<sup>27</sup> At the hearing, Petitioner's testimony inferred that Ms. Godfrey and other management staff, apparently for nefarious reasons, attempted to hide the fact of the position reclassifications from her until after they had been finalized. [Tr. At 62-64]. As evidenced by the e-mail exchange, it is quite obvious that Petitioner was informed in advance that other support staffs were being reclassified. There is no credible evidence of an attempt to mislead or misinform her regarding these employment actions.

## APPENDIX 8-C

date of employment decision made and employee is informed of decision); Peanick, 96 F.3d at 321 (limitations period commences on date employee is informed of adverse employment action). Based on this evidence, the undersigned finds that the following claims are untimely and subject to dismissal: (4) promotions awarded to Mr. Hale; (8) promotions awarded to the other support staff; and (11) age discrimination. [7/9/02 Complaint].

In an attempt to save the untimely claims, Petitioner casts these incidents as part of a practice of discriminating against her, that is, as a part of ongoing discriminatory acts directed against her, primarily due to her national origin. [Tr. at 66]. Petitioner also claims racial and ethnic discrimination based on "a pattern of restructuring and renaming positions" in the Staff Attorneys' Office. [7/9/02 Complaint, Claim 9, Attachment at 5]. In essence, Petitioner is urging the undersigned to adopt a "continuing violation" theory to resurrect the untimely claims. That doctrine does not apply to these claims.

The continuing violation doctrine allows a party who files a timely claim for a discriminatory act to recover for prior discriminatory acts which would otherwise be time-barred. See Roberts v. Gadsden Memorial Hosp., 835 F.2d 793, 800 (11<sup>th</sup> Cir. 1988), modified upon reconsideration, 850 F.2d 1549 (11<sup>th</sup> Cir. 1988). "Under the continuing violation doctrine as applied to this administrative proceeding's statute of limitations, '[w]here an employee charges an employer with continuously maintaining an illegal employment practice, he [or she] may file a valid charge of discrimination based upon that illegal practice until [30] days after the last occurrence of an instance of that practice.'" Blalock v. Dale County Board of Education, 84 F. Supp. 2d 1291, 1306 (M.D. Ala. 1999)(quoting Beavers v. American Cast Iron Pipe Co., 975 F.2d 792, 796 (11<sup>th</sup> Cir. 1992)). Accordingly, if an employer has continuously maintained an illegal employment policy or has committed a series of acts amounting to a practice of discrimination, the

employer cannot rely on the statute of limitations to bar suit so long as at least one discriminatory act occurred within the required time period. See Lewis v. Board of Trustees of Alabama State University, 874 F. Supp. 1299, 1303 (M.D. Ala. 1995). However, the allegedly timely discriminatory actions or policy implementation "cannot simply be a perpetuation of the effects of the past discriminatory acts." Blalock, 84 F. Supp. 2d at 1306 (quoting Bush v. Liberty Nat'l Life Ins. Co., 12 F. Supp. 2d 1251, 1257 (M.D. Ala. 1998)). And, a plaintiff "may not sit back and accumulate all the discriminatory acts and sue on all within the statutory period applicable to the last one." Moskowitz v. Trustees of Purdue University, 5 F.3d 279, 282 (7<sup>th</sup> Cir. 1993). "A claim arising out of an injury which is 'continuing' only because a putative plaintiff knowingly fails to seek relief is exactly the sort of claim that Congress intended to bar by the 180-day limitation period." <sup>28</sup> Roberts, 850 F.2d at 1550. See also Hipp v. Liberty National Life Insurance Co., 252 F.3d 120<sup>7</sup>, 1222 (11<sup>th</sup> Cir. 2001); Lane v. Ogden Entertainment, 13 F. Supp. 2d 1261 (N.D. Ala. 1998).

The Supreme Court currently made it clear that an employee may not recover for untimely discrete acts of discrimination, "even when they are related to acts alleged in timely filed charges. Each discrete discriminatory act starts a new clock for filing charges alleging that act." National R.R. Passenger Corp. V. Morgan, \_\_\_ U.S. \_\_\_, \_\_\_ 122 S.Ct. 2061, 2072, 153 L.Ed.2d 106 (2002). The Court went on to note that "[d]iscrete acts such as termination, failure to promote, denial of transfer, or refusal to hire are easy to identify. Each incident of discrimination and each retaliatory adverse employment decision constitutes a

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<sup>28</sup> This is apparently the course that Petitioner opted for in this case, that is, not acting on claims although she believed that she was being discriminated against by her superiors. In her complaint initiating the consultation process, Petitioner stated, "I did not come forward sooner or to address these issues, took everything I can, because I know it is easier to deal with those emotional abuses by suppressing and keeping silent." [3/12/02 Complaint, letter attachment at 4].

## APPENDIX 8-C

separate actionable 'unlawful employment practice.'" *Id.* at \_\_\_, 122 S. Ct. at 2073. Thus, the continuing violation doctrine is inapplicable with regard to a string of alleged incidents each of which would constitute a completed act of clear discrimination, regardless of any connection to timely claims. See, e.g., *Hipp*, 252 F.3d at 1222 n. 12; *Roberts*, 835 F.2d 793 (holding that several sequential denials of promotion do not constitute a continuing violation). Applying this test to the instant cause of action, the undersigned finds that Petitioner has not established a continuing violation. Each of the listed incidents occurred at a clearly defined time or over a specified period of time, which preceded before February 11, 2002. And, as evidenced by Petitioner's testimony, well before February of 2002, she believed that the motives for the actions taken were discriminatory. [Tr. at 24-34, 48-52, 65-66; 3/12/02 Complaint, letter attachment at 4].

For these reasons, the undersigned **DISMISSES** as untimely: (1) denial of a promotion in 1996 Petitioner alleges she was promised; (2) denial of equivalent pay rate for seven (7) months following the conversion from the JSP system to the CPS system in 1996; (3) failure to reclassify Petitioner's position based on additional duties assumed in 1999 and failure to promote Petitioner to Office Manager, Classification Level ("CL") 28, in January 2000; (4) failure to promote Petitioner to Automation Specialist, CL 27, in January 2000, and promotions of Mr. Hale; (6) denial of promotion to Manager for Recruiting, Professional Development and Training, CL 30 in January 2002; (7) denial of training opportunities until June 2001; (8) 2002 promotions of other support staff accompanying denial of promotion for Petitioner; (9) racial and ethnic discrimination based on a pattern of allegedly discriminatory personnel decisions; and (11) age discrimination.

### 2. Personnel Manager

Petitioner claims that she has been denied promotion to the vacant position of Personnel Manager. [7/9/02



## APPENDIX 8-C

Complaint, Claim 5]. For individual disparate treatment claims, such as this claim raised by Petitioner in her complaint, she carries the burden of proof of demonstrating that Respondent has unlawfully discriminated against her. See Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). In circumstantial evidence case, the allocation of burdens and order of presentation of proof are as follows: (1) Petitioner has the burden of proving a *prima facie* case of discrimination by a preponderance of the evidence; (2) if Petitioner proves the *prima facie* case, the burden of (production) then shifts to Respondent to articulate a legitimate, non-discriminatory reason for the action taken against the employee; and (3) if Respondent carries this burden, Petitioner has an opportunity to prove by a preponderance of the evidence that the legitimate reason offered by Respondent was a pretext for discrimination. See McDonnell Douglas Corp. v. Green 411 U.S. 792, 802-804, 93 S.Ct. 1817, 1824-25, 36 L.Ed.2d 668 (1973); Carter v. Three Springs Residential Treatment, 132 F.3d 635, 642-643 (11<sup>th</sup> Cir. 1998).

An employee establishes a *prima facie* case of failure to promote by showing (1) that she belongs to a protected group; (2) that she sought and was qualified for the position that the employer was attempting to fill; (3) that despite her qualifications she was rejected; and (4) that after her rejection the employer either continued to attempt to fill the position or in fact filled the position with a person outside of the plaintiff's protected group. See Walker v. Mortham, 158 F.3d 1177 (11<sup>th</sup> Cir. 1998); Crawford v. Western Electric Co., Inc., 614 F.2d 1300, 1315 (5<sup>th</sup> Cir. 1980). Petitioner cannot establish a *prima facie* case of failure to promote because the evidence establishes that the position of Personnel Manager, although vacant, was not available due to lack of funding. [Pet.'s Note: See Petitioner's note at page 12.]. See Jones v. Lumberjack Meats, Inc., 680 F.2d 98, 101 (11<sup>th</sup> Cir. 1982) ("Among the elements [plaintiff] must establish in making out a *prima facie* case showing such a discriminatory act is the existence of an open position. . . ."); see also Dragon v.

## APPENDIX 8-C

State of Rhode Island, Department of Mental Health, Retardation & Hospitals, 936 F.2d 32, 35-36 (1<sup>st</sup> Cir. 1991)(no proof of discrimination when evidence established that plaintiff was not promoted into vacant position because it was not available due to hiring freeze); Broughton v. Connecticut Student Loan Foundation, 64 F.Supp 2d 64, 67-68 (Conn. 1999) (finding plaintiff did not suffer adverse employment action when employer failed to promote him to position which was eliminated after being vacated by employee formerly serving in position).

The evidence established that as a result of the Self-Study conducted in 2001, Ms. Godfrey, with approval of the judges on the Eleventh Circuit Court of Appeals, created the position of Personnel Manager for the Staff Attorneys' Office. [Tr. at 44, 53-54, 164-65, 167, 192]. *[Pet.'s Note: This was actually Petitioner's position, being downplayed by Naomi Godfrey. See excerpts of the recommendation from the self-study executive committee at F-1.J.* Petitioner who had been performing various personnel duties, expressed interest in the position. [Tr. at 55-56]. That position remains vacant due to the fact that there is no budget to pay for hiring someone to fill the position. Based on the Eleventh Circuit Court of Appeals judge's instructions to her, Ms. Godfrey hired and/or promoted various individuals for vacancies in the office. However, she was not given approval to fill the Personnel Manager position nor could she given other budgetary requirements. [Tr. at 203, 247-48]. *[Pet.'s Note: While Petitioner was the sole "personnel person" in the office, she performed those duties for 3 ½ years without added compensation. This position was already budgeted as recommended and approved by the court at the conclusion of the self-study. Naomi Godfrey's explanation was another of her charades, was a pretext to cover up true reason for not filling the personnel manager position so the Petitioner will not have an opportunity to apply. Furthermore, if budget was the issue, why was Karen Sinyard promoted again in April 2002? See also Petitioner's note on page 12 above. The undersigned failed to see true issues of the entire case. By analyzing the case without looking at the whole picture, the*



## APPENDIX 8-C

*undersigned fragmented her analysis].* Mr. Zoller, Circuit Court Executive, confirmed to Petitioner, at the time Ms. Godfrey provided this explanation to her, that there were budget issues involving personnel vacancies. [Petitioner's Ex. 5: §§ 1 & 1A — Claims 8 & 10, Exhibit 7]. Ms. Godfrey also advised Petitioner that when the position opened, Petitioner would be able to apply. <sup>29</sup>There is simply no evidence of discrimination in the facts presented to the undersigned.

Because Petitioner did not apply for an available position and because she, therefore, was not rejected for the Personnel Manager position, she cannot establish that she suffered an adverse employment action such as is necessary to prove *prima facie* case of failure to promote. See Broughton, 64 F. Supp. 2d at 68 ("As stated succinctly in Burdine, a *prima facie* case is dependent upon an appropriate application for an available position and rejection there[from] which was indicative of unlawful discrimination.") (citation omitted) (emphasis in original). Because Petitioner has failed to meet her burden on this substantive issue, her request for relief based on Claim 5 is **DENIED**.

### 3. Racial and Ethnic Discrimination

Petitioner also claims that she suffered racial and ethnic discrimination based on derogatory and demeaning comments and innuendoes which were made by Ms. Godfrey and Ms. Sinyard. [7/9/02 Complaint, Claim 10]. These comments and innuendoes were made over the year with the last occurring in January or February 2002. [Tr. at 82-91,

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<sup>29</sup> Petitioner claims in an attempt to deny her promotion, Ms. Godfrey has eliminated the position. [Tr. At 58, 87-88]. The evidence simply does not support this contention. Ms. Godfrey testified that the position has not been eliminated and could not be eliminated without approval of the judges. [Tr. At 248-50]. [Pet.'s Note: Naomi Godfrey had already proven too many inconsistencies on her testimony without any supporting evidence. This reasoning was so untrue as cited above, and the judges gave Naomi Godfrey so much discretionary authority staffing her court unit.]

## APPENDIX 8-C

275-78]. The undersigned interprets this claim to be that Petitioner was subjected to a hostile working environment as a result of these comments because of her race and national origin.

To establish a *prima facie* case of race and/or ethnic hostile work environment, Petitioner must show that "(1) [s] he is a member of a protected group; (2) [s]he was subjected to unwelcome harassment; (3) the harassment was based on race [or ethnic background]; (4) the harassment affects the term, condition, or privilege of employment; and (5) respondeat superior." Merriweather v. Alabama Department of Public Safety, 17 F. Supp. 2d 1260, 1271-72 (M.D. Ala. 1998) (citing Henson v. Dundee, 682 F.2d 897 903-05 (11<sup>th</sup> Cir. 1982); Bivins v. Jeffers Vet Supply, 873 F. Supp. 1500, 1507 (M.D. Ala. 1994)). Petitioner cannot establish a *prima facie* case of harassment because the evidence of the alleged harassment fails to demonstrate that it was based on her race or national origin or that it was sufficiently severe or persuasive to affect Petitioner's terms or conditions of employment.

An employer violates Title VII by "creating or condoning an environment at the work place which significantly and adversely affects an employee because of [her] race or ethnicity regardless of any other tangible job detriment to the protected employee." Henson, 682 F.2d at 901. To succeed on a hostile environment claim, an employee "must show that the hostility was sufficiently pervasive to alter the conditions of employment and create an abusive working environment." Perryman v. West, 949 F. Supp. 815, 820 (M.D. Ala. 1996). See also Harris v. Forklift Sys., Inc., 510 U.S. 17, 21, 114 S.Ct. 367, 370, 126 L.Ed. 2d 295 (1993) ("Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive—is beyond Title VII's purview."). Factors courts should consider in deciding whether a hostile work environment was created include the frequency and severity of the discriminatory conduct, whether the conduct is

threatening or humiliating, and whether the conduct reasonably interferes with employee's work performance." See Edwards v. Wallace Community College, 49 F.3d 1517, 1521 (11<sup>th</sup> Cir. 1995).

Petitioner's claim fails primarily because the alleged derogatory and demeaning comments and innuendoes simply are not objectively harassing nor do they evidence a prohibited discriminatory intent. Only one of all of the comments related by Petitioner, and that comment was not directed at her, evidenced any discriminatory intent.<sup>30</sup> All of the other comments and statements which were objectionable to Petitioner, on their face appear to be complimentary or directed to Petitioner because her co-workers believed she was financially well-off. Being rich, and even being harassed for such financial status, however, is not a classification for which Title VII offers protection. See Hudson v. Norfolk Southern Railway Co., 209 F. Supp. 2d 1301, 1315 (N.D. Ga. 2001) ("As to [supervisor's] interest in guns and martial arts, and other comments not based on a protected class of persons, there can be no claim[, because] these and other 'boorish' comments allegedly made by [the supervisor] have no place under Title VII law, as Title VII specifically prohibits only that discrimination based on 'race, color, religion, sex, or national origin.'").

According to Petitioner, Ms. Godfrey made remarks to Petitioner regarding her stylish and expensive appearing clothing and jewelry and expressed that Petitioner appeared to have money. Ms. Sinyard, on a couple of occasions stated that she did not know why Petitioner was there, that is, at the Staff Attorneys' Office, because "we all know that she's leaded, you know." [Tr. at 83]. After Ms. Godfrey observed Petitioner driving her automobile one afternoon and waved at her, Ms. Godfrey commented about the car at work, and

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<sup>30</sup> This comment, according to Petitioner, was made in 2001 and was directed at one of the staff attorneys who was of Asian descent. According to Petitioner, Ms. Godfrey stated that Asians do not write well. Ms. Godfrey denies making the comment. [Tr. at 91, 183].

## APPENDIX 8-C

asked her husband to ask Petitioner about the car, and eventually bought similar model car. Petitioner stated that she did not know how to interpret Ms. Godfrey's actions.<sup>31</sup> [Tr. at 277-78]. Also, at an orientation session for new attorneys, when Petitioner was introducing herself, Ms. Godfrey asked her to tell the attorneys about her antique business, which Petitioner testified she did not feel was proper. [Tr. at 277-78]. One time, Ms. Sinyard also stated, referring to where Petitioner's desk was located, "Well people like her should be watched." [Tr. at 84]. And, in either January or February 2002, one of the supervising attorneys stated to Petitioner, in Ms. Sinyard's presence, that Petitioner owed him lunch because "she's loaded, you know, and Karen Sinyard again said, yeah, we all know she's loaded." [Tr. at 85-86]. Accepting these comments were made, they simply do not establish a hostile working environment based on a protected classification.

Petitioner's subjective feelings about these remarks do not alter the undersigned conclusion. A determination of whether the conduct or comments are sufficiently severe and persuasive contains not only a subjective component but an even more critical objective one. Petitioner's belief that she is being harassed based on a protected trait must be objectively reasonable. See Gupta v. Florida Board of Regents, 212 F.3d 571, 586 (11<sup>th</sup> Cir. 2000) ("[A] plaintiff's subjective feelings and personal reactions are not the complete measure of whether conduct is of a nature that it interferes with job performance. If it were, the most unreasonably hypersensitive employee would be entitled to more protection than a reasonable employee, and the standard would not have an objective component."); Andrews v. City of Philadelphia, 895 F.2d 1469, 1483 (3<sup>rd</sup> Cir. 1990) (The objective Factor, however, is the more critical for it is here that the finder of fact must actually determine whether the work environment is . . . hostile" and it "protects the

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<sup>31</sup> One obvious interpretation is simply that imitation is the sincerest form of flattery.

## APPENDIX 8-C

employer from the 'hypersensitive' employee[.]"); Lombardi v. Cosgrove, 7 F. Supp. 2d 481, 494 (D. N.J. 1997) (This element contains an objective factor "which excludes the idiosyncratic response of a hypersensitive [employee]."). Petitioner interpreted these remarks to be directed at her Asian background and to mean, for that reason, that she did not deserve to have nice things. [Tr. at 82-84]. Petitioner testified that she felt the remarks were "unwarranted" and that there were "underlying motive[s]" in the remarks directed at her Asian heritage. [Tr. at 275-78]. There is absolutely nothing in the record to objectively support any underlying actionable discriminatory motives based on Petitioner's Asian heritage. And, to the extent Petitioner felt that these remarks were inappropriate for the work place and personally offended her, "Title VII is not meant to be a 'general civility code' and cannot give life to these statements that are unrelated to a protected class." Hudson, 209 F. Supp. 2d at 1315 (citation omitted). <sup>32</sup>

For the reasons stated, the undersigned finds that Petitioner has failed to meet her burden. Therefore, Petitioner is not entitled to any relief on her hostile work environment claim, and Claim 10 is **DENIED**.

### 4. Retaliation

Petitioner also complains about the actions and conduct which occurred following the filing of her complaint seeking consultation on March 12, 2002. According to Petitioner, she was subjected to retaliation and a hostile work environment as a result of filing the petition. [7/9/02 Complaint, Claim 13]. She claims that Ms. Godfrey began monitoring her work; that her personnel duties were being reassigned; that she was denied a training opportunity; that Ms. Godfrey and others "quit" talking to her; that she was required to use annual leave for time away from the office

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<sup>32</sup> The undersigned also notes that there is no evidence that Petitioner was humiliated, verbally or physically threatened, or otherwise subjected to harassing conduct by her supervisors or co-workers.



## APPENDIX 8-C

associated with her mother's illness and death, however, other employees were allowed to use sick leave for the same purpose;<sup>33</sup> that her computer was improperly accessed and documents deleted; and that she was subjected to callous and mean spirited treatment following her mother's death. [Id.]

Title VII acts to shield employees from retaliation for certain protected practices. Specifically, the statute provides, in pertinent part:

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment . . . because he has opposed any practice made an unlawful practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

42 U.S.C. § 2000e-3(a). The EDR Plan also protects employees from adverse employment actions taken as a result of filing a complaint. EDR Plan, Chapter VII, § 2. See Holified v. Reno, 115 F.3d 1555, 1566 (11<sup>th</sup> Cir. 1997); Robinson v. AFA Service Corp., 870 F. Supp. 1077, 1083 (N.D. Ga. 1994). The burden of production is initially on the

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<sup>33</sup> In her July 2002 complaint, Petitioner separates out the leave use and alleges that she was subjected to disparate treatment in the application of the leave policy in April and May, 2002. [7/9/02 Complaint, Claim 12]. However, Petitioner did not raise this claim in her amendment to the March 12, 2002, complaint which alleged retaliation and hostile work environment based only on an exchange of e-mails in March 2002. [March 25, 2002, Amendment to EDR Claim Filed March 12, 2002]. There is no documentation in the record before the undersigned which establishes that this claim — nor any additional allegedly retaliatory actions — were presented for consultation or mediation. Despite Petitioner's failure to establish that these claims are properly before the undersigned, see EDR Plan Chapter VII, §§ 6A and 7B(2), the undersigned will consider the leave issue and the remaining claims of retaliatory and harassing conduct in resolving Petitioner's final claim for relief, that is, relief based on retaliation and a retaliatory hostile work environment.

## APPENDIX 8-C

employee, who must establish a *prima facie* case of retaliation by a preponderance of the evidence. To establish a *prima facie* of retaliation, "a[n employee] must show that (1) she engaged in statutorily protected expression; (2) she suffered an adverse employment action; and (3) the adverse action was causally related to the protected expression." Wideman v. Wal-Mart Stores, Inc., 141 F.3d 1453, 1454 (11<sup>th</sup> Cir. 1998). The plaintiff "need not prove the underlying claim of discrimination which led to [her] protest," however, the plaintiff must have had a reasonable good faith belief that the discrimination existed." Holifield, 115 F.3d at 1566 (citing Tipton v. Canadian Imperial Bank of Commerce, 872 F.2d 1491, 1494 (11<sup>th</sup> Cir. 1989)). Moreover, "[i]t is important to note that this circuit interprets the causation requirement broadly: 'a plaintiff merely has to prove that the protected activity and the negative employment action are not completely unrelated.'" Robinson, 870 F. Supp. at 1083 (citing EEOC v. Reichold Chems., Inc., 988 F.2d 1564, 1571 (11<sup>th</sup> Cir. 1993)). See also Olmsted v. Taco Bell Corp., 141 F.3d 1457, 1460 (11<sup>th</sup> Cir. 1998).

Petitioner, by filing her complaint seeking consultation in March 2002, engaged in protected expression. And, for the purposes of this decision, the undersigned will assume that all of the challenged actions have a causal relationship to the filing of the complaint. However, as to most of the actions claimed to be retaliatory, Petitioner cannot satisfy the second element of the *prima facie* case as the acts complained of simply do not constitute adverse employment actions. See Southard v. Texas Board of Criminal Justice, 114 F.3d 539, 555 (5<sup>th</sup> Cir. 1997) ("Not every negative employment decision or event is an adverse employment action that can give rise to a . . . retaliation cause of action. . . ."); Geer v. Marco Warehousing, Inc., 179 F. Supp. 2d 1332, 1341 (M.D. Ala. 2001) ("A materially adverse employment action 'must be more disruptive than a mere inconvenience or an alteration of job responsibilities.'").



Petitioner's claim of retaliation was triggered by Ms. Godfrey's March 22, 2002, request to her for the accounting of her daily work and activities as previously requested by Ms. Gilibert. The only other employee, Ms. Williams, reporting to Ms. Gilibert was not required to provide this accounting.<sup>34</sup> [Tr. at 174-76, 238-39; Petitioner's Ex. 8: Cha VII § 2A—Claim 13, Exhibits 2 and 3]. Additionally, Petitioner claims that Ms. Godfrey did not approve a training opportunity for her in March 2002.<sup>35</sup> [Tr. at 76-77]. Petitioner also testified that her job duties were being handled by other employees, thus, were being taken away from her. Petitioner fails to offer any substantiation or even cogent reasoning for this contention.<sup>36</sup> [Tr. at 58-61, 68].

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<sup>34</sup> The undersigned notes that the Respondent provided a legitimate, non-discriminatory reason for requesting that Petitioner account for her time. As Ms. Godfrey testified, the March e-mail was sent because Petitioner had not complied with two (2) previous requests made by Ms. Gilibert, Petitioner's new supervisor. Ms. Gilibert had asked Petitioner to review some materials and prepare a report regarding various operations relating to personnel and recruiting. Petitioner had not provided that report. [Tr. At 174-75, 238-39]. Petitioner admitted being asked to complete that project and that she had yet to provide the report to Ms. Gilibert. Petitioner, in fact, submitted the information as requested a few days after the exchange of e-mails. [Tr. 271-73; Petitioner's Ex. 10]. Ms. Gilibert had also asked for Petitioner to account for her work because as a new supervisor Ms. Gilibert was not aware of what tasks Petitioner was performing and the amount of time required for the tasks. [Tr. At 174-76, 238-39; Petitioner's Ex. 8: Cha VII § 2A—Claim 13, Exhibits 2 and 3]. Ms. Williams was not asked to account for her activities because Ms. Gilibert was assigning Ms. Williams specific tasks and was aware of the work being handled. [Tr. At 176].

<sup>35</sup> There is no evidence that Petitioner was denied training in March 2002 based on a retaliatory motive. On March 21, 2002, Petitioner requested to participate in training which had a March 25, 2002, application deadline. Ms. Godfrey responded by requesting more information about the training. [Tr. At 238; Petitioner's Ex. 11 and 8: Cha VII § 2A—Claim 13, Exhibits 2 and 3].

<sup>36</sup> The undersigned also notes that in her complaint, Petitioner alleged that her job responsibilities were being taken away as a result of the Self-Study conducted in 2001. [7/9/02 Complaint, Claim 13]. The

Petitioner also asserts that Ms. Godfrey ignored her and that Ms. Godfrey and others in the office treated her poorly during the time of her mother's illness and after her mother's death. In this regard, Petitioner testified that, although money was collected for a donation for her mother, she was not given this money until a couple of months later. When she was given the donation, she returned it to those who contributed. [Tr. at 80-82]. Petitioner claims as well that her computer was accessed in her absence and that she believes some files were deleted having to do with the Self-Study. Because of this access to her computer, Petitioner testified she could not order on line a refill of a prescription.<sup>37</sup> [Tr. at 74-76].

Accepting for purposes of argument that these events were undertaken in response to the filing of Petitioner's

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undersigned fails to understand, if true, how this fact establishes retaliation by Ms. Godfrey in 2002. And, the record does not support Petitioner's contention of job duty reassignment. In early 2002, the support staff was reorganized, but Petitioner continued to perform essentially the same administrative jobs relating to recruiting and personnel matters. [Tr. At 154, 178, 201-02]. Additional employees were tasked in 2002 with handling some of Petitioner's duties but that occurred as a result of the amount of time, approximately fifty (50) days, that Petitioner was absent from the office and other employees had to assist with the work. [Tr. At 225, 246]. Even assuming that Petitioner's job duties were altered, she has failed to establish that the changes sufficiently impacted her employment as to constitute an adverse employment action. There is no evidence Petitioner's job title changed, her work hours changed, she was transferred or relocated, or was otherwise deprived of the benefits of employment.

<sup>37</sup> Although Petitioner testified to the problems she perceived involving her computer, she failed to demonstrate that Ms. Godfrey, or anyone else for that matter, had anything to do with the computer problems. [Tr. At 75, 102-03, 176-77]. Suspicion and conjecture are simply insufficient to carry her burden of proof. See Blount v. Alabama Cooperative Extension Service, 869 F. Supp. 1543, 1553 (M/D. Ala. 1994); see also Plaisance v. Travelers Insurance, 880 F. Supp. 798, 804 (N.D. Ga. 1994) (conclusory allegations based on subjective beliefs and reliance upon speculation and unsubstantiated hearsay does not create a genuine issue of material fact).

complaint, the conduct simply does not constitute an adverse employment action which is necessary to support a claim of retaliation. See, e.g., Scusa v. Nestle U.S.A. Company, Inc., 181 F.3d 958, 969 (8<sup>th</sup> Cir. 1999) (claims that employee was shunned, ostracized or shown disrespect did not rise to the level of an adverse personnel employment action); Drake v. Minnesota Min. & Mfg. Co., 134 F.3d 878, 886 (7<sup>th</sup> Cir. 1998) (shunning and lost paperwork from employee's locker are not adverse employment actions); Munday v. Waste Management of North America, Inc., 126 F.3d 239, 243 (4<sup>th</sup> Cir. 1997) (no adverse employment action based on employee's claims supervisor directed to co-workers to ignore and spy on employee and refused to communicate with employee concerning complaint); MacLean v. City of St. Petersburg, 194 F. Supp. 2d 1290, 1299 (M.D. Fla. 2002) (as decisions regarding work assignments are "the very heart of an employer's business judgment and expertise," court denied to find additional workload placed on employee constituted adverse employment action); Geer, 179 F. Supp. 2d at 1341 (finding no adverse employment action in refusing to provide properly functioning equipment or to upgrade equipment); Snellgrove v. Teledyne Abbeville, 117 F. Supp. 2d 1218, 1243-44 (M.D. Fla. 1999) (change in job assignments and duties did not constitute adverse employment action); Chappell v. School Board of the City of Virginia Beach, 12 F. Supp. 2d 509, 516-17 (E.D. Va. 1998) (various complaints relating to administrative matters, personality conflicts, snubs, and criticisms, monitoring of work, and questioning activities did not constitute adverse employment actions); Cobb v. Anheuser Busch, Inc., 793 F. Supp. 1457, 1493 & n.10 (E.D. Mo. 1990) (claims that employees were retaliated against based on assignment of onerous tasks, subjecting them to scrutiny, and criticizing their work did not constitute adverse employment actions).

Petitioner also claims that, after filing her complaint, she was required to use annual leave for time off to attend to her mother's illness and for her mother's funeral but that

## APPENDIX 8-C

two (2) other employees were treated differently with respect to leave; thus, she was subjected to disparate treatment in retaliation for filing her complaint.<sup>38</sup> [7/9/02 Complaint, Claim 12]. Because the handling of leave impact an employee's benefits, the undersigned will assume for this discussion that this claim establishes an adverse employment action. However, the undersigned finds that Petitioner has failed to establish retaliatory disparate treatment.

Petitioner does not claim that the leave policy as applied to her situation was in violation of the policy. A review of the evidence indicates that the policy was, in fact, applied correctly to Petitioner's leave requests.<sup>39</sup> In April 2002 when Petitioner's mother became seriously ill, Petitioner requested to use sick leave, in lieu of annual leave,

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<sup>38</sup> An employee can make out a *prima facie* case of disparate treatment by proving (1) that she was within a protected class; (2) that she suffered an adverse employment action; and (3) that a similarly situated employee not within her protected class was not subjected to the adverse employment action. See Texas Dep't of Community Affairs v. Burdine, 450 U. S. 248, 258 101 S. Ct. 1089, 1096, 67 L.Ed.2d 207 (1981); Krieg v. Paul Revere Life Ins. Co., 718 F.2d 998, 999 (11<sup>th</sup> Cir. 1983).

<sup>39</sup> The leave policy for the Court of Appeals provides in pertinent part:

Full-time\* employees may use 40 hours of accrued sick leave in each leave year to provide care for a family member as a result of physical or mental illness . . . or other condition that, if an employee had such a condition, would justify the use of sick leave by such an employee. This amount of sick leave also may be used to make arrangements necessitated by the death of a family member or to attend the funeral of a family member. An additional 64 hours of sick leave may be used for these purposes in a leave year by a full-time\* employee but only to the extent the use of such additional hours does not cause the amount of sick leave to the employee's credit to fall below 80 hours. . . .

[Respondent's Ex. 5].

## APPENDIX 8-C

in order to travel to California and be with her mother. Petitioner's request was granted, and she used sick leave for the period April 16 through 19, 2002. [Tr. 68-70, 73]. She was also granted use of sick leave for May 2 and 3 2002. [Tr. at 73]. Petitioner again requested use of sick leave to return to California to be with her mother for the period May 6 through 16, 2002, and, when her mother passed away, to handle funeral arrangements for the period May 28 through 31, 2002. [Tr. at 68-69, 73]. However, because Petitioner's sick leave balance would fall below eighty (80) hours with additional sick leave being taken, Petitioner advised by Ms. Sinyard that annual leave must be charged for these days off from work. [Tr. at 70]. Therefore, the additional leave was charged as "annual."

However, Petitioner claims that the leave policy was applied more liberally to two (2) other employees, Ms. Williams, a member of the support staff, and Ms. Etta Mouton, an attorney in the office. [Tr. at 70, 72]. In order to establish a claim of disparate treatment based on retaliation, Petitioner must establish that Respondent treated similarly situated employees outside her classification, that is, complaining, more favorably than it treated her. In Jones v. Bessemer Carraway Medical Center, 137 F.3d 1306 (11<sup>th</sup> Cir.), partial superseding opinion or denial of rehearing, 151 F.3d 1321 (11<sup>th</sup> Cir. 1998), the Eleventh Circuit emphasized that the proper comparison is to employees that are "similarly situated in all relevant respects." 137 F.3d at 1311. (citing Holified, 115 F.3d at 1562). Thus, the relevant inquiry is whether the employer subjected similarly situated employees to different employment policies. See Lathem v. Dep't of Children and Youth Services, 172 F.3d 786, 793 (11<sup>th</sup> Cir. 1999). Petitioner failed to establish that either of the identified employees is similarly situated.

According to Petitioner, Ms. Williams was allowed to charge sick leave not annual leave for time associated with her father-in-law's illness and funeral although Ms. Williams



## APPENDIX 8-C

did not have sufficient number of sick leave hours. [Tr. at 70-71]. Excepting Petitioner's assertion regarding Ms. Williams' leave balance, nothing in the record substantiates her claim of disparate treatment. Ms. Williams testified that in order to care for her father-in-law, she asked and was granted one (1) week (forty (40) hours) of sick leave the first week of April 2002. She then asked and was granted one (1) week of sick leave the last week of May 2002, for the funeral. [Tr. at 133]. Ms. Williams testified that she was aware of the requirement to have sufficient accrued sick leave and that she had enough time to take the leave.<sup>40</sup> [Tr. at 133-34]. Based on the evidence before the court, there is no evidence that the leave policy at issue [Respondent's Ex. 5] was applied in a disparate manner.

According to Petitioner, a second employee, Ms. Mouton, was allowed to take leave, although she had not been with the office for a year, and was placed on the voluntary leave program, because she did not have enough hours of leave. [Tr. at 71-72]. Ms. Mouton's leave situation, however, simply does not compare the situation involving Petitioner. According to Ms. Godfrey, as evidenced by the leave policy, the Family Friendly Leave Act, which allows the substitution of sick leave for annual leave within the guidelines of the Act. This leave is paid. [Tr. at 184-85; Respondent's Ex. 5]. On the other hand, Ms. Mouton lacked

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<sup>40</sup> The questions regarding the actual number of hours Ms. Williams had before and after taking the leave periods is confusing and provides no assistance to the undersigned. [Tr. At 133]. As it is Petitioner's burden to establish proof of a similarly situated employee, failure to substantiate her claim results a finding of no relief. [Pet.'s Note: *The issue here was another prohibited personnel practice, by which Naomi Godfrey abused her discretionary authority. Etta Mouton (F/B) has not been employed with the office for 12 months when this employee benefit was approved. This personnel action was in violation of the court and AO's personnel policy regarding FMLA and FFLA. See F-11. A copy of Etta Mouton's leave statement was also provided and part of the record. This was another issue that when not analyzed as part of the whole, the undersigned failed to see the true picture of the entire case.*]

## APPENDIX 8-C

the necessary number of hours for the leave she needed having used all her accrued leave; therefore, she was placed on leave without pay under the Family Medical Leave Act. [Tr. at 185]. As the leave policies being applied to Petitioner and to Ms. Mouton are not the same, the employees simply are not similarly situated for purposes of establishing disparate treatment. <sup>41</sup> See O'Hara v. Mt. Vernon Board of Education, 16 F. Supp. 2d 868, 886 (S.D. Ohio 1998) (The fact that the policies in issue required approval for early return to work from parental leave but not when returning from disability leave did not establish a *prima facie* case of discrimination. "Plaintiff's comparison with male employees who took disability leave and did not require approval before returning to work is meaningless. The provisions for disability leave and parental leave are different, and plaintiff, to show disparate treatment discrimination, must show that she was treated differently than males under the provisions dealing with parental leave.").

Finally, Petitioner claims Ms. Godfrey and others since the filing of her complaint in March 2002 establish a hostile work environment. "Retaliatory harassment can constitute adverse employment . . . but only if such harassment adversely affects the 'terms, conditions, or benefits of [plaintiff's] employment.'" Von Gunten v. Maryland, 243 F.3d 858, 869-70 (4<sup>th</sup> Cir. 2001). In Bass v. Board of County Commissioners, Orange County, Florida, 256 F.3d 1095 (11<sup>th</sup> Cir. 2001), the Eleventh Circuit Court of Appeals applied the requirement of "adverse employment action" to a retaliatory harassment cause of action, stating:

An adverse employment action is an ultimate

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<sup>41</sup> The fact that Ms. Mouton was placed on the voluntary leave program, to which other employees can donate annual leave, thus, allowing her to accumulate annual leave to use and potentially not suffer leave without pay, is not relevant to this discussion. [Tr. at 71-72]. There is no contention by Petitioner that she sought assistance through the voluntary leave program and was denied opportunity.



## APPENDIX 8-C

employment decision, such as discharge or failure to hire, or other conduct that alters the employee's compensation, terms, conditions, or privileges of employment, deprives him or her or employment opportunities, or adversely affects his or her status as an employee. . . . Conduct that falls short of an ultimate employment decision must meet "some threshold level of substantiality . . . to be cognizable under the anti-discrimination clause.

Id. at 1118 (citations omitted); see also Perryman v. West, 949 F. Supp. 815, 820 (M.D. Ala. 1996) (For a hostile environment to affect a term or condition of employment, plaintiff "must show that the hostility was sufficiently pervasive to alter the conditions of employment and create an abusive working environment.").

The undersigned has essentially addressed this claim in analyzing Petitioner's individual allegations of retaliation. Neither singly nor in combination does the alleged retaliatory conduct establish actionable retaliatory harassment. See, e.g., Bass, 256 F.3d at 1118 (neither being directed to record tasks on a work log nor the fact the employer "dispos[ed] of training programs, database files for documenting training, and graphic/multimedia material prepared by [employee]" constitute actionable retaliatory harassment); Kent v. City of Homestead, 2000 WL 732109 \*\*4 and 9 (S.D. Fla. March 14 2002) (changing employee's days off, failure to appoint employee as temporary, acting Sergeant, and alleged general harassment, including verbal abuse, excessive monitoring of work, and denial of first choice of days off, do not constitute adverse employment action to support retaliatory harassment); Chika v. Planning Research Corp., 179 F. Supp. 2d 575, 587-88 (D. Md. 2002) (reprimands, close supervisory monitoring and questioning of work, and transfer to night shift are not adverse

## APPENDIX 8-C

employment actions, thus, there is no retaliatory hostile work environment); Casey v. Wal-Mart Stores, Inc., 8 F. Supp. 2d 1330, 1338 (N.D. Fla. 1998) (claims that, following filing of complaint, store director would stare at employee and give employee dirty looks did not establish actionable retaliatory harassment); McCoy v. Macon Water Authority, 966 F. Supp. 1209, 1221 (M.D. Ga. 1997) (claims that employee "was harassed by being given an unreasonable work schedule, by attending a meeting which he perceived as 'mean-spirited' and 'condescending,' by being made to cross the street and report to supervisor . . . each afternoon, and by having his desk searched, and by being watched[ ]" did not constitute retaliatory harassment).

Petitioner has failed to establish that the complained of events constituted adverse employment actions as required to establish a *prima facie* case of retaliation or to establish that she was subjected to retaliatory harassment.

Therefore, Petitioner is not entitled to relief on her retaliation claim, and Claims 12 and 13 are **DENIED**. In chambers, Atlanta, Georgia, this 14<sup>th</sup> day of November 2002.

/s/ Janet F. King  
JANET F. KING  
UNITED STATES  
MAGISTRATE JUDGE

### NOTICE

Pursuant to Chapter VII, § 8, of the EDR Plan, a party or individual aggrieved by a final decision of the designated judicial officer, may within twenty-one (21) days of the date of the letter transmitting the final decision, petition for review of that final decision in accordance with the procedures set forth in Chapter VIII of the EDR Plan.

**APPENDIX — 9-C**

**NO. 04-3452**

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**UNITED STATES COURT OF APPEALS FOR THE  
FEDERAL CIRCUIT**

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**Evelyn L. Johnson,**

**Petitioner,**

**v.**

**Staff Attorneys' Office and Supervising Officials et al.,  
Employing Office,  
Acting on Behalf of the Administrative Office  
of the U.S. Courts,**

**Agency,**

**Respondents.**

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**Petition for Review  
from the Merit Systems Protection Board  
in Docket No. AT-0752-03-0934-I-1**

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**BRIEF OF THE PETITIONER**

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**I. MSPB FILINGS.** The case before this Court, rendered against the Petitioner, Evelyn L. Johnson (Petitioner), was an adverse personnel action of involuntary termination of a federal government employment by the employing office, Staff Attorneys' Office (SAO) for the U.S. Court of Appeals Eleventh Circuit, acting on behalf of the Administrative Office of the U.S. Courts, Agency.<sup>1</sup> Pursuant to Petitioner's allegation under the court's Employment Dispute Resolution (EDR) Plan, the adverse employment action of involuntary termination, was the result of continuing retaliation action due to the Petitioner's

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<sup>1</sup> (Appendix 1, Tabs 1-3, 5; AOUSC Model EDR Plan; Judicial Conference of the U.S. Model EEO Plan; The Federal Judiciary Model EDR Plan).

filing of EDR/EEO complaint in 2002 for intentional discrimination and disparate treatment under Title VII, violation of anti discrimination law, prohibited personnel practices, and other federally protected activity. Although appointments of U.S. courts' employees differ according to employees' position and term of employment, U.S. courts' employees are under the oversight jurisdiction of the Administrative Office of the U.S. Courts. *Title 28 U.S.C. § 602, Administrative Office of the U.S. Courts* states that: <sup>2</sup>

The Director may delegate any of the Director's functions, powers, duties, and authority to such offices and employees of the judicial branch of Government as the Director may designate, and subject to such terms and conditions as the re-delegation of such functions, powers, duties, and authority as the Director may deem desirable. All official acts performed by such officers and employees shall have the same force and effect as though performed by the Director in person.

(Appendix 1, Tab ). *The Congressional Accountability Act of 1995, Public Law 104-1, codified at 2 U.S.C. § 1301* evidences congressional intent of the Act that on December 31, 1996, the procedures enforcing the anti discrimination statutes for judiciary employees were established. The Judicial Conference of the United States would report to Congress with findings and recommendations on Title VII and other statutory coverage for judicial branch employees. *2 U.S.C. § 1434. (Appendix 1, 7); (R2-Vol 2, Tab 5).* <sup>3</sup>

The Adverse Personnel Action Policy of the court Personnel Manual, provides court employees with the right to request a hearing in which the court employer must show

<sup>2</sup> (*Id.*; see also, Appendix 1, Tabs 5—Eleventh Circuit Court of Appeals EDR Plan).

<sup>3</sup> (2 U.S.C. § 1434, Judicial Branch Coverage Study; MSPB Filings Response to magistrate judge's petition and cross petition).

## APPENDIX — 9-C

good cause for its adverse personnel action. This due process right is similar to those accorded other federal employees. A magistrate judge conducted the adverse personnel action hearing on October 29, 2003, and she found for the Respondents. (Appendix 1, Tab 1). <sup>4</sup>

**A. Initial MSPB Filing.** Petitioner timely filed initially the petition with the MSPB on September 6, 2003, and served a copy of the petition to her counsel. (R1- Vol 1, Tab A; R2 - Vol 2, Tabs 1 & 2). <sup>5</sup> Petitioner had established the MSPB jurisdiction regarding the case, and undisputed facts of alleged discrimination involve inextricably-intertwined multiple-personnel adverse actions, intentional discrimination, and removal under Title VII. Petitioner's counsel (Counsel), however, without Petitioner's express permission decided to withdraw Petitioner's MSPB complaint via a letter dated October 8, 2003, and told the Petitioner that their firm will only pursue the filings with the employing office of adverse personnel action and the 2003 EDR complaint. Petitioner's intent was to file a petition with the MSPB as well. Petitioner did not give Counsel express permission to withdraw Petitioner's MSPB complaint. Based on Counsel's action, the MSPB dismissed the appeal on October 9, 2003, as its initial decision. Counsel made an error in judgment in sending the October 8, 2003, letter to the MSPB, which the MSPB ruled as DISMISSED. (R2-Vol 2, Tabs 1 & 2). <sup>6</sup>

**B. Petition for Review by the MSPB Board.** Petitioner requested and filed timely Petition for Review with the MSPB Board on November 5, 2003, to Reopen and Review Petitioner's complaint on its entirety because Petitioner believed that her Counsel's action was error in

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<sup>4</sup> (See also, Petitioner's Motion for Change of Venue for a more detailed statement of facts; see e.g., 5 U.S.C. §§ 7513, 7701, and 7703).

<sup>5</sup> (Petitioner's initial MSPB petition; see also, Counsel's "Notice of Withdrawal" Letter dated October 8, 2003; MSPB's initial decision, entered October 9, 2003).

<sup>6</sup> (Id.).



## APPENDIX — 9-C

judgment. Furthermore, facts and issues of the complaint were inextricably intertwined, and Petitioner alleged causal connection that the involuntary termination was retaliatory termination due to the 2002 EDR complaint Petitioner had filed. (R2-Vol 2, Tab 4). <sup>7</sup> As evidenced by Counsel's letter dated November 18, 2003, however, Counsel urged Petitioner again to withdraw Petitioner's Petition for Review with the MSPB Board. By Petitioner's letter of November 5, 2003, to the MSPB Board, Petitioner went against Counsel's advice and Petitioner proceeded with the petition pro se. Since Petitioner's intent was to file a petition with the MSPB, Petitioner should not be penalized for the counsel's error in judgment. (R2-Vol 2, Tab 3). <sup>8</sup> On July 12, 2004, the MSPB Board issued its final decision to vacate and dismiss the complaint for lack of jurisdiction. Attached is the Board's final decision, which disposes of all parties' alleged claims. (R2-Vol 2, Tab 12). <sup>9</sup>

### II. MERIT SYSTEMS PROTECTION BOARD (MSPB Board) JURISDICTION

A. The MSPB Board Erred in Dismissing the Petitioner's Case for Lack of Jurisdiction. The Board is governed by procedures under 5 *CFR* 1201.155. The Board must review the agency decision on the merits regarding to its own statutory jurisdiction and also review the decision(s) on the allegations of discrimination. The nature of Petitioner's course of action, and the real issue of fact and law presented at the adverse personnel action hearing, were facts related to the 2002 EDR complaint. While the complaint was supported by substantial evidence in the record as a whole, the decision of the MSPB, referred to in 5 U.S.C. § 7702(a)(1)(B), constitutes an incorrect

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<sup>7</sup> (Counsel's second "Notice of Withdrawal" letter to the Petitioner dated November 18, 2003).

<sup>8</sup> (Petitioner's Request to the MSPB Board to Reopen and Reconsider to review case in its entirety).

<sup>9</sup> (MSPB Board's Final Decision entered on July 12, 2004).

## APPENDIX — 9-C

interpretation of any provision of any law, rules, regulations or policy. (R3-Vol 1, Tab 1). <sup>10</sup>

### **B. MSPB Jurisdiction of Mixed Case Complaint.**

Regulations state that a mixed case complaint is a complaint of discrimination, related to or stemming from, an action taken by an agency against a complainant, may be appealed to the MSPB Board (Board). Federal employees are entitled to appeal to the Board appealable matters which include removal for unacceptable performance and allegation of discrimination due to prohibited personnel practices. (R1-3; R9, 10, 11, 12-Vols 1, 2, 3, 4). <sup>11</sup> The Legislative History of the Civil Service Reform Act establishes that the MSPB has primary responsibility to initially adjudicate "mixed cases." *Legislative History of the Civil Service Reform Act of 1978, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. (Comm. Print 1979) Vol. 1, 640.*

Since the claim of discrimination on this instant case is not extinguished and the complaint is accompanied by an appealable action of retaliatory termination, as a result of prohibited personnel practice, the Board was empowered to adjudicate the complaint. A case or controversy remains to be decided on appeal. *Article III, § 2.* The Board has jurisdiction over appeals from agency actions when the appeals are authorized by law, rule, or regulation from the following actions: removal (5 U.S.C. § 7512); determinations affecting the rights or interests of an individual or of the United States under the Federal Employees Thrift Savings Plan (TSP), the Federal Employees Retirement System (FERS) (5 USC 8347(d)(1)-(2) and 8461(e)(1)). 5 USC 1201.3(a)(2) and (a)(6). Discrimination and prohibited

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<sup>10</sup> (Petitioner's Motion for Complaint Under EDR Plan, Motion to Consolidate, Motion to Clarify Issues to be Determined; see also, Appendix 1, Tabs 1-4, 7). 5 CFR 1.2-1.3, 212.101; 28 U.S.C. § 604.

<sup>11</sup> (Appendix 1, Tabs 1-3, 5; AOUSC Model EDR Plan; Judicial Conference of the U.S. Model EEO Plan; The Federal Judiciary Model EDR Plan; MSPB Filings Vols. 1 & 2; 2003 Adverse Personnel Action and 2003 EDR Complaint; Four Volumes of Exhibits presented and admitted in court hearing of September 25-26-2002).



## APPENDIX — 9-C

personnel actions are appealable under 5 USC 2302(b)(1); removal under 5 USC 4303; and adverse action under 5 USC 7512. 5 USC 12101.3(b)(2) and 1202.3(c)(i). The Board applied the wrong law by vacating and dismissing the complaint for lack of jurisdiction. The Board failed to take into account facts and dismissed without considering the evidence as a whole, and the Board's conclusion was contrary to the evidence presented. The Board should have reviewed the appeal because it has subject-matter jurisdiction over the complaint, and the Petitioner presented sufficient evidence to meet the required burden of production and persuasion. The standard of review for the lower court's dismissal of a party for lack of jurisdiction is reviewed de novo. 5 U.S.C. § 7703. Lockard v. Equifax, Inc., 163 F.3d, 1259, 1265 (11<sup>th</sup> Cir. 1998).

### III. FEDERAL CIRCUIT COURT OF APPEALS JURISDICTION

**A. Federal Circuit has Exclusive Jurisdiction over Petitions for Review of Order of MSPB for appeals filed after October 1, 1982.** Boylan v. U.S. Postal Service, 704 F.2d 573, 574 and n.1 (11<sup>th</sup> Cir. 1983), cert denied, 466 U.S. 939 (1984); Bruno v. U.S., 744 F.2d 753 (11<sup>th</sup> Cir. 1984).

**B. The Employing Office and the Board Made a Clear Error in Judgment and had Applied an Incorrect Legal Standard.** The governing standard of review for the lower court's findings of fact is reviewed under the clearly erroneous standard, and its legal conclusions are subject to review in its entirety. Fed.R.Civ.P. 52(a); National Shipping Company of Saudi Arabia v. Omni Lines, Inc., 106 F.3d 1544, 1545 (11<sup>th</sup> Cir. 1997). The Eleventh Circuit reviews a district court's evidentiary rulings for abuse of discretion, but the Eleventh Circuit's decision here was contrary to its own opinion on evidentiary rulings. Alexander v. Fulton County, Georgia, 207 F.3d 1303, 1326 (11<sup>th</sup> Cir. 2000). For the reasons set forth below, the Court

## APPENDIX — 9-C

should VACATE the MSPB Board's decision and enter JUDGMENT as a matter of law for the Petitioner.

### IV. THE BASES OF THE COURT OF APPEALS' JURISDICTION, AND CITATIONS APPLICABLE TO STATUTORY PROVISIONS

The bases of the court of appeals' jurisdiction and the nature of this case are established in three-part inquiry: whether the employing office erred in dismissing without prejudice the Petitioner's complaint and incorrectly applied the law pertaining to the Petitioner's allegations of 1) retaliatory termination; 2) intentional discrimination and disparate treatment under Title VII for violation of anti discrimination law, prohibited personnel practices, continuing retaliation, hostile work environment, constitutional and civil rights violation, federal civil service employment statutes, and other federally protected activity filed in March 2002 under the employing office's EDR/EEO plan; and 3) July 2003 EDR complaint filed for continuing retaliatory actions due to the filing of the 2002 EDR/EEO, resulting in the Petitioner's involuntary termination. (R1, 2, 3).<sup>12</sup>

The Supreme Court considered claims of retaliation and hostile work environment brought under Title VII of the Civil Rights Act of 1964 held that "a hostile work environment claim should be reviewed in its entirety, so long as one of the events comprising it fell within the statute of limitations." Specifically, the Court emphasized, "a hostile work environment claim contains a series of separate acts that collectively constitute one "unlawful employment practice."

It does not matter, for purposes of the statute, that some of the component acts of the hostile work environment fall outside the statutory time period. Provided that an act contributing

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<sup>12</sup> (Id.).

## APPENDIX — 9-C

to the claim occurs within the filing period, the entire time period of the hostile work environment may be considered by a Court for the purposes of determining liability.

National Railroad Passenger Corp. v. Morgan, — U.S. —, 122 S.Ct. 2061, 153 L.Ed.2d 106 (2002); 42 USC 2000e et seq.

### V. BACKGROUND OF THE CASE

The complex nature of this case contains inextricably-intertwined issues on prohibited personnel practice of non promotion and disparate treatment. The adverse personnel actions spanned more than six years through the filing of the initial complaint, and finally, Petitioner's involuntary/retaliatory termination. The essence of the complaint, however, is focused on a continuing and intentional violation of anti discrimination law under Title VII, violation of constitutional and civil rights, federal civil service employment statutes, continuing retaliatory actions, including federally protected activity, and hostile work environment. (R1-Vol 1, Tabs A-F). <sup>13</sup>

Evelyn L. Johnson, Petitioner (Petitioner), a 52-year-old female of Asian descent, and the only Asian support staff with the SAO since Petitioner's employment there, had a total of 21+ years of federal civil service employment at the time of the involuntary termination. As a competitive service employee, Petitioner was transferred without-a-break in service from the Veterans Administration in January 17, 1989, to the federal judiciary. The employing office, Staff Attorneys' Office (SAO), had employed the petitioner for almost 14 years before the termination on June 27, 2003, terminating her career-federal employment of twenty-one + (21+). (R1-Vol 1, Tabs D, E, F). <sup>14</sup>

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<sup>13</sup> (MSPB Filings, R1 & R2, Vols 1 & 2; R3 2003 Adverse Personnel Action and 2003 EDR Complaint).

<sup>14</sup> (Initial MSPB Filing, Tabs D, E, F).

## APPENDIX — 9-C

Petitioner realized that due to numerous instances of opportunities for promotion, specially the recent changes and the reorganization of the SAO in the fall of 2001, she suspected her employer's deliberate underlying intent for Petitioner's non promotion was discriminatory. After many years of non promotion, Petitioner studied her employing office's actions, intent, and motives of her non promotion over the years, which spanned more than six years. Year 1996 was the first occurrence of Petitioner's federal employment adverse action of non promotion, and the pattern of practice through the years. Petitioner did not file any complaint prior to March 12 because back then, she believed the employing office's explanation of her non promotion, and it did not occur to the Petitioner that there could be any other reason of her non promotion.

Petitioner, however, had a reason to believe that there was promotion disparity because she was the human resources' employee of the employing office for the last 3 ¼ years of Petitioner's employment with the SAO, through the onset of the instant complaint. (R9, 10, 11, 12-Vols 1, 2, 3, 4; & R8-Vol 2; Appendix Tab 8). <sup>15</sup> Petitioner initially filed an Employee Dispute Resolution (EDR) complaint through the employing office's EDR Plan on March 12, 2002.

Petitioner gathered substantial material evidence and initially filed an EEO/EDR complaint on March 12, 2002, against her employing office for continuing, intentional discrimination and disparate treatment under Title VII, prohibited personnel practice due to non promotion based on race, national origin, color, sex, age.

Ten days after Petitioner filed the complaint, employing office subjected the Petitioner to numerous retaliatory actions creating hostile work environment for her. The employing office held the 2002 EDR complaint hearing

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<sup>15</sup> (Four (4) volumes of Exhibits & Amended Pleadings dated March 31, 2003).

## APPENDIX — 9-C

on September 25-26, 2002, before a magistrate court judge, and the hearing judge found for the Respondents.

Beginning January 22, 2002, through the Petitioner's termination, the SAO alleged insubordinate behavior, unsatisfactory work, and inappropriate conduct in the discharge of responsibilities as the basis of Petitioner's termination. Throughout Petitioner's employment history, she never received any adverse employment action, had never been delinquent with her duties and responsibilities, always professional in discharging her duties and responsibilities, and always received excellent performance reviews. (R7-Vol 1, Tab 6). <sup>16</sup> From the time the SAO employed the Petitioner and before the filing of the EDR complaint, Petitioner received excellent performance reviews from the SAO. (R8-Vol 2, Tabs 8-end; compare, R4 & R5; R7-Vol 1, Tabs 1 & 8). <sup>17</sup>

Petitioner never had any attitude or performance-related problems throughout her career, including her employment with the SAO for almost 14 years until the employing office decided to monitor every minute detail of Petitioner's work, including tampering of her computer, which impeded her work. Petitioner alleged that the performance-related problems claimed by the Respondents were initiated as after-the-fact justification and that the paper-trail discipline was imposed only to document Petitioner's impending involuntary termination. Respondents' actions were clearly retaliatory because the paper-trail documentation was initiated while the

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<sup>16</sup> (Id.; see also, R7-Vol 1, Tab 6, Performance Reviews; compare, R4, Defendant's Exhibits at October 29, 2003, Hearing).

<sup>17</sup> (Amendment to Petition for Review dated March 31, 2003, Compare with Respondents' Exhibits at the Adverse Action Hearing held on October 29, 2003. Although the hearing judge refused to consolidate the adverse action and the 2003 EDR complaint, note that the issues presented here were part of the 2002 EDR complaint, which was dismissed on procedural grounds).



## APPENDIX — 9-C

Petitioner's 2002 EDR complaint was still pending, and while the Petitioner was involved in protected activity.

On appeal, the employing office affirmed on April 24, 2003, without any explanation, the hearing officer's dismissal of the entire complaint on procedural grounds (timeliness, hearsay, and relevancy), without addressing all the issues and merits of the case. (R1-Vol 1, Tab G). <sup>18</sup> The 2002 EDR proceedings lasted for 407 days.

Less than 60 days when the ruling on Petitioner's 2002 EDR complaint became final, the employing office terminated Petitioner's employment, as expressly stated in the employer's involuntary-termination letter dated June 20, 2003. Petitioner alleged that she was fired without good cause, other than the filing of the 2002 EEO/EDR complaint, and was fired under the pretexts of insubordination and other performance-related matters. Petitioner timely filed a hearing request for the Adverse Personnel Action on June 26, 2003. (R3-Vol 1, Tabs 7 & 8; R8-Vol 2, Tabs 8-end 1). <sup>19</sup>, and timely filed another EDR complaint on July 16, 2003, for continuing retaliation related to the 2002 EDR complaint, and retaliatory termination. (R3-Vol 1, Tab 8). <sup>20</sup>

### VI. FACTS, ISSUES, AND DISCUSSION

**A. Unresolved and Undisputed Factual Issues that Precipitated the Federal Employment Complaint Allegations of Intentional Discrimination and Retaliatory Termination.** Below are presentations of events that precipitated the complaint:

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<sup>18</sup> (Judicial council's Order entered April 24, 2003).

<sup>19</sup> (Letters dated June 20, July 1, July 10, 2003; see also, Petitioner's Amended Pleadings dated March 31, 2003; compare with Respondents' Exhibits at the 2003 Adverse Personnel Action Hearing, October 29, 2003).

<sup>20</sup> (2003 EDR complaint filed).

## APPENDIX — 9-C

1) **March 12, 2002.** Initial filing of the EDR/EEO complaint. (R9-12). <sup>21</sup>

2) **March, April, May 2002.** Ten days after Petitioner filed the complaint, the Respondent asked the Petitioner to begin keeping time sheets and account daily and hourly activities, although they asked none of the other support staffs to do so. (R10-Vol 2; R11-Vol 3). <sup>22</sup>

3) **April/May 2002.** Disparate treatment in application of leave usage and violation of FMLA rights. When Petitioner's mother, who lived in California, suffered a sudden stroke on April 12, 2002, and her eventual death on May 8, 2002, Respondents pressured Petitioner to return to work and was charged with 72 hours of annual leave rather than sick leave because of an office policy that sick leave balance cannot fall below 80 hours. Two black/female employees, however, experienced the same hardship during the same time, were allowed to take sick leave and were "exempted" from that office policy. One employee had a balance of less than 40 hours sick leave. The other employee, a term employee who had not served a full 12-month service with the office, was allowed to take combined extended sick and annual leave under the Federal Employees Family Friendly Leave Act and Voluntary Leave Sharing Program, which was not in compliance with the court personnel policy. Soon after the employee exhausted the voluntary-leave contribution (more than 400 hours), she resigned from her position. (Appendix 1, Tab 10; R11-Vol 3). <sup>23</sup>

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<sup>21</sup> (Initial filing of the 2002 EDR complaint).

(Hearing transcript for hearing held on October 29, 2003. A hearing for Adverse Personnel Action was held on October 29, 2003, before a magistrate court judge. The magistrate judge found for the Respondents and that the employing office was justified in firing the Petitioner for allegations of insubordinate behavior, unsatisfactory work, and inappropriate discharge of responsibilities).

<sup>22</sup> (R11-Vol 3, Exh 2, Claim 13; R10-Vol 2, Exh 4, Claim 2)

<sup>23</sup> (Appendix 1, Tab 10, FMLA Rules; R11-Vol 3, Exh 1-6, Claim 12).



## APPENDIX — 9-C

4) Relinquishing of duties and responsibilities performed for more than three years without good cause. In July-September 2001, the court instituted an office self-study. Petitioner's position was part of the SAO self-study. Because of the self-study, the human resources' unit branched out of the office organization, the position Petitioner held for more than three years without added compensation. While the reorganization could have benefitted the Petitioner about promotion possibilities, Respondents pushed Petitioner out of her job permanently. Respondents divided Petitioner's former position into two separate positions that would be responsible for SAO recruiting and retaining of staff attorneys, and personnel administration, which the self-study committees and Naomi Godfrey recommended, and approved by the court. An outside white/female applicant, Sara Gilibert, filled the recruiting manager position, and was appointed at CL 30 grade level, four grades higher than the Petitioner's. Although Sara Gilibert possessed a JD, she did not meet the qualifying standards and experience required specifically listed on the vacancy announcement. Furthermore, although Petitioner applied for that position, Petitioner's application was never considered and the only application that did not go through the usual hiring procedure. (R8-Vol 2, Tab 2; R9 Vol 1, Exh 2, Claims 8 & 9).<sup>24</sup>

Moreover, Respondents reclassified a black/female (Jackie Williams) employee's position description almost identical to the Petitioner's, while the subject employee had not performed the duties and responsibilities Petitioner performed. Respondents reclassified that employee's position. Respondents asked Petitioner to train both the newly hired recruiting manager and the black/female employee. Respondents asked Petitioner to provide detailed processes of her duties and responsibilities as part of the two employees' training. These two employees had eventually taken over Petitioner's position. (R8-Vol 2, Tabs 1, 2, 6; R11-

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<sup>24</sup> (PDs arranged in alpha order).

## APPENDIX — 9-C

Vol 3; R12-Vol 4). <sup>25</sup> Petitioner was solely responsible in administering the administrative duties of recruiting staff attorneys for the SAO for more than 12 years. Since staff attorneys are appointed as term employees, SAO recruits, hires, and separates staff attorneys, ranging from 15-30 staff attorneys annually. Petitioner was also responsible in the personnel function for all SAO employees with administrative duties regarding appointments, separations, payroll liaison, and employee benefits, which, Petitioner, singlehandedly held for more than three years, without added compensation commensurate to her duties and responsibilities. (R8 Vol-2; R11-Vol-3). <sup>26</sup>

**5) Computer monitoring.** The Petitioner was experiencing work-related emotional stress because of the filing of the complaint, her mother's illness and death, and was even compounded when Petitioner returned to work between absences, she noticed her computer was acting strangely. Petitioner believed they were monitoring her computer. Petitioner had reason to believe that they were monitoring her computer due to computer problems she dealt with almost daily. Petitioner was the only one who continually had computer problems. Petitioner found out later that her computer was linked Intranet via a host computer in the office and channels the court and AO 's Internet connection via the host computer to Petitioner's computer. The computer problems and the alleged monitoring started in the early processing of the EDR complaint through Petitioner's termination. Remarkably, Petitioner never had those computer problems before filing the complaint. (Id.).

**6) Hostile work environment.** In revisiting the Respondents prior actions, Petitioner felt that Naomi Godfrey, in collusion with Karen Sinyard, had subjected

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<sup>25</sup> (R8, Tab 2 - Williams' PD; Tab 6, sampling of Petitioner's work; R11, Exh 4, Claim 12; Exhs 1 & 2, Claim 13; R12 Exhs 5-8, Claims 3, 5, & 7).

<sup>26</sup> (R8-Vol 2, Tabs 9, 17, 18, 20, 25; R11-Vol 3, Exh 4, Claim 14).

## APPENDIX — 9-C

Petitioner to hostile work environment when Sinyard discreetly reclassified, upgraded support staffs' positions, and discounted Petitioner as one of the support staff employees in the SAO. While Godfrey, Sinyard, and other support staffs congregated, laughed outside Petitioner's office, and before Petitioner learned the fact, everyone whom they promoted discussed, and was told, of their upcoming promotions. Respondents never approached Petitioner of the support staff changes of duties, not to mention the creation of almost identical position description as Petitioner's, for another employee. This action was to manipulate and get around the AO Human Resources Rules and Guidelines in order to conform to the AO requirements for promotions. The newly created position descriptions (PDs) of those support staffs were inaccurate and misrepresentation of support staffs' duties being performed, or not performed, at the time they submitted the personnel actions to the AO. Those personnel actions were unlawful personnel practice and unethical, approved by the head of the SAO, and submitted to the AO by Karen Sinyard. Naomi Godfrey's email to Petitioner dated March 25, 2002, not only evidenced the fact of her unfair treatment with the Petitioner, but also blatant abuse of discretionary authority, disregard of the AO Personnel Guidelines, and manipulation to achieve Respondents' own goal. (Appendix 1; R8).<sup>27</sup>

After careful study of the Respondents' actions toward Petitioner's non promotion, Petitioner reviewed the personnel records to verify the validity of Petitioner's suspicion that discriminatory intent may have been a motivating factor of Respondents' actions. Only then the Petitioner filed the initial complaint.

From that time on, Petitioner began to experience silent hostility, constant work scrutiny, could not do anything right, received adverse memos, letters, emails from Sara Gilibert, as ordered by Naomi Godfrey. Respondents

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<sup>27</sup> (Appendix 1, Tabs 1, 2, 4, 5, 6, 9, 10; R8-Vol 2, Tabs 1 & 2).

## APPENDIX — 9-C

then ordered Petitioner to attend the Employee Assistance Program (EAP), a counseling program available to court employees experiencing mainly "personal problems." Petitioner felt that action was an attempt to malign her character and for the Respondents to establish a record to discredit Petitioner's credibility. When Petitioner refused to attend the EAP, shortly after employing office entered its final decision of the 2002 EDR complaint, issued on April 24, 2003, Respondents involuntarily terminated the Petitioner, via letter dated June 20, 2003. (R1 & 2, Vols 1 & 2).

**7) Employer intentionally engaged in unlawful employment practice; abuse of discretionary authority affecting terms, conditions, and privileges of employment; engaged in a wide range of prohibited personnel practices; engaged in continuing intentional discriminatory actions and disparate treatment for many years. *The factual issues below are in reverse order of events beginning year 2001:***

a) **February 11, 2002.** Blanket promotions of support staffs (except Petitioner, newly hired receptionist, and part time student/employee). Reason given by Respondents to Petitioner's non promotion was that they recently promoted Petitioner on September 11, 2002. Petitioner alleged that promotion was the long time sought-after promotion because 1995 was the last promotion Petitioner received before September 2002, and Respondents' given reason was a pretext to the true reason of Petitioner's non promotion, along with other support staffs' blanket promotions. (R. Vol Tab ).<sup>28</sup> After receiving the new SAO organizational chart on March 1, 2002, Petitioner verified the employees personnel files to check the validity of support staffs' new positions. This was the event that triggered the instant (original) complaint after Petitioner studied the Respondents underlying actions, motivations,

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<sup>28</sup> (Cheryl Vessels' Fax )

## APPENDIX — 9-C

and intentions of Petitioner's non promotion. (R8-Vol 2, Tab 2). <sup>28</sup>

b) **April 9, 2002.** Promotion of another favored employee, Karen Sinyard, female/white, to the next higher grade, CL 29, although Naomi Godfrey alleged budget constraints for not filling the personnel manager position. (R—). <sup>29</sup>

c) **April/May 2002.** Disparate treatment in application of leave usage and violation of FMLA rights. (R11-Vol 3, Exhs 1-5, Claim 12). <sup>30</sup>

d) **August 26, 2002.** Personnel manager position that the SAO should have filled, recommended and approved by the court because of the self-study, was the only position not filled, whether for open recruitment or promotion possibilities for other employees. They arbitrarily deleted the position that Petitioner could apply when opened for recruitment, and promotion potential since Petitioner performed human resources' duties and responsibilities for more than three years without added compensation. Naomi Godfrey decided not to fill the position to prevent Petitioner from applying and again denying Petitioner promotion opportunity and career advancement; (R12-Vol 4, Exhs 1-3, 9). <sup>31</sup>

e) **December 2001.** Another denial of promotion opportunity and career advancement when, although Petitioner applied and was qualified for the position, Petitioner's application was not considered for the position

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<sup>28</sup> (Personnel Actions on promotions of support staffs on February 11, 2002. Sinyard and Hale were promoted twice between 2000 and 2002).

<sup>29</sup> (See Karen Sinyard's promotion and the newest organizational chart.).

<sup>30</sup> (Selectee for the recruiting manager position, Sara Gilibert's application and other interviewees for the position).

<sup>31</sup> (SAO Organizational Charts and how Respondents arbitrarily manipulated positions in the HR unit).



## APPENDIX — 9-C

of Manager for Recruiting, Professional Development & Training; (R—). <sup>33</sup>

f) **June 2001.** For more than two years of performing personnel administration, they denied Petitioner specialized human resources training until June 2001. Beginning April 1999, Petitioner was the only employee responsible for the administrative duties in recruiting and personnel administration for an office that grew from 50 to 80 employees. Although not adequately trained, Petitioner performed those duties with no known problems. Such training could also help Petitioner for career advancement. (R10-Vol 2, Exh 2, Claim 3). <sup>34</sup>

g) **July 2000.** Denial of consideration for promotion and career advancement, Automation Specialist position, a CL 27 grade, and two grades higher than the Petitioner, arbitrarily changed title to Administrative Case Manager and downgraded to CL 25. Petitioner was the sole back up of the Automation Specialist, Karen Sinyard, female/white, for more than ten years and performed most of her duties during her absences. They gave the downgraded position to another favored employee, James Hale, male/black, his second promotion from the time he was hired in 1997 as a receptionist, CL 23. James Hale's new grade, CL 25, became equal to Petitioner's grade, CL 25, the grade she held since 1996. (R8-Vol 2, Tab 1, pp 16-17, Tab 2). <sup>35</sup>

h) **January 2000.** Denial of consideration for promotion and career advancement, Budget Analyst position, a CL 28 grade, arbitrarily changed title to Office Manager position. They gave the position to another favored

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<sup>34</sup> (R8-Vol, Tab 2, pp. 21-31; Tabs 4 & 5, selectee, Sara Gillibert's application and other interviewees' applications for the position; compare, R10-Vol 2, Exh 2, Claims 7 & 11).

<sup>35</sup> (Sinyard & Hale's promotions in 2000 pp 16-17).

## APPENDIX — 9-C

employee, Karen Sinyard, female/white. Petitioner inherited most of the duties of the budget analyst when incumbent (Toni Mason) took early retirement in March 1999. (R8-Vol 2, Tab 2). <sup>36</sup>

i) April 1999. Failure to reclassify Petitioner's position due to change of duties and when assigned personnel administration, besides recruiting staff attorneys, and other administrative duties and responsibilities. Although Petitioner's duties and responsibilities changed over the years, the SAO failed to reclassify and/or adjust Petitioner's compensation commensurate to her designated duties and responsibilities since 1995, Petitioner's last promotion before September 2001. (R8-Vol 2, Tab 1, pp 12-15; R10-Vol 2, Exh 1, Claim 3). <sup>37</sup>

Both positions (g) and (h) above were promotions for both employees because of Toni Mason's retirement, but they never announced vacancies and promotion opportunities whether open recruitment or for other employees to apply. Petitioner was trained and full time back up during employees absences for more than ten years in both positions. Both positions were higher grades (before they downgraded the Automation Specialist position from CL 27 to CL 25) and a promotion possibility for the Petitioner; (R7-Vol 1, Tab 5, p 14);

j) July 1996. Denial of equivalent pay rate following the court-wide conversion of court pay systems, from JSP to CPS; (R7-Vol 1, Exhs 1-3, Claims 1 & 2). <sup>38</sup>

k) July 1996. Denial of full promotion in 1996, as promised and evidenced by emails, as opposed to what they

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<sup>36</sup> (Sinyard's promotion from Automation Specialist (CL 27) to Office Manager (CL 28).

<sup>37</sup> (Email from Naomi Godfrey dated April 1, 1999).

<sup>38</sup> (Pay charts).



actually gave Petitioner, a within-grade increase. (R10-Vol2, Exhs 1 & 2, Claim 1; Exh 3, Claim 2). <sup>39</sup>

**l) Racial and ethnic discrimination.** Over the past several years, there had been a pattern of restructuring and renaming positions within the office to move existing staff into higher-paid positions without submitting the new position descriptions and job titles to the Administrative Office of the U.S. Courts (AO) for approval, thereby avoiding the necessity to advertise those positions for open recruitment. Petitioner believes that those attempts were to keep her from obtaining higher paid position within the office, while providing opportunities for white and black employees to be promoted instead; (Appendix, Tab 9). <sup>40</sup>

**m) Racial and ethnic discrimination.** As there was no plausible explanation to justify non promotion, Respondents made numerous unwarranted remarks regarding clothes, shoes, jewelry, with reverse or "feel good" psychology effect that Petitioner was "loaded," as in money. While Respondents conceded that those remarks were "compliments," Petitioner inferred those remarks, neither "compliments" nor "flattery," because Petitioner is not "loaded" or rich by any means, and Petitioner inferred those "loaded" remarks as suggestive in that they paid Petitioner enough, as the only Asian support staff, and they do not need to pay Petitioner more money. As Petitioner's pursuit for promotion had been long-standing, misdirected, misled, thereby avoiding promotion, increase in pay, or more money, the underlying intent of Petitioner's non promotion was nothing but discriminatory.

**n) Age discrimination.** Petitioner was the oldest and one of the two most seniors among support staffs. All other employees whom they had promoted since 1996,

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<sup>39</sup> (Emails dated — & Pay charts).

<sup>40</sup> (Excerpts from Guide to Judiciary Policies & Procedures, Chapter 10).

## APPENDIX — 9-C

sometimes several times, were younger than the Petitioner. Several of those promoted had less experience, and had carried far fewer duties and responsibilities than the Petitioner. Petitioner alleged employer's actions were pretexts, bad faith, callous disregard of rules and regulations, and were conscious, malicious, deceptive, and unlawful and Respondents' given reasons were pretexts to cover up the true reasons why they involuntarily terminated Petitioner's employment.

Guide to Judiciary Policies and Procedures, Chapter X. Personnel Policies and Procedures. AO Human Resources Operating Procedures outline roles and responsibilities for administration of the CPS for judiciary units and personnel actions on promotions, job qualifications' standards, and CPS pay setting must be consistent with the Guide operating procedures. Petitioner's allegation of numerous employment issues specific to Personnel actions on promotions, reclassifications, recruitment, job qualifications standards, and CPS setting conflicted with the express provisions of the Guide that substantially effected Petitioner's terms, conditions or privileges, and federal retirement benefits. (Appendix 1, Tab ).<sup>41</sup>

B. Application of the legal standard to the evidence whether Petitioner is entitled for a motion for judgment on the pleadings. McDonnell Douglas Corp., Hicks, and subsequent case law. The substantial material evidence of all allegations in the complaint, the reasons proffered by the Respondents, combined with the elements of prima facie case were sufficient to support the fact finder to infer that discrimination was more likely a motivating factor or determinative cause of the adverse employment actions.

"The basic framework governing discrimination cases based on circumstantial evidence of discrimination was

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<sup>41</sup> (Guide to Judiciary Policies and Procedures).

## APPENDIX — 9-C

established by the United States Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). Under that framework, the plaintiff has the initial burden of establishing a prima facie case of discrimination. McDonnell Douglas, at 411 U.S. at 802, 93 S.Ct. at 1824; Burdine, 450 U.S. at 253-54 & n.6, 101 S.Ct. at 1093-94 & n.6." (Quoting Combs v. Plantation Patterns, 106 F.3d 119 (11<sup>th</sup> Cir. 1997).

### VII. MAJOR ISSUES

To guide the discretion of the court, several factors setting forth factual issues and their interrelationships are guided under the three-part inquiry on these major issues: involuntary/retaliatory action (2003 adverse personnel action), 2002 EDR/EEO complaint filed, and 2003 EDR/EEO complaint filed for continuing retaliation due to the filing of the 2002 EDR complaint. (R— Vol , Tab ).

#### A. Adverse Personnel Action—Involuntary Termination by Letter dated June 20, 2003. (R8-Vol 2, Tab

7). " Involuntary termination, description of conduct being challenged, including dates of conduct. Involuntary termination of federal employment was the last continuing retaliatory action related to the whole complaint. Less than 60 days after Petitioner's 2002 EDR complaint became final, Petitioner received the termination letter from the Respondents. Petitioner believes there is direct causal relationship of the involuntary termination to the real essence of the complaint filed in March 2002 under the

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<sup>42</sup> (R8-Vol 2, Tab 7, Compare Petitioner's filing of continuing retaliatory actions and involuntary termination letter dated June 20, 2003, R3-Vol 1, Tab ; R4, 2003 Adverse Personnel Action Defendants' Exhibits; R1 & 2, Vols 1 & 2).

## APPENDIX — 9-C

employing office's EDR/EEO plan, as mentioned above. (R—Vol , Tab ).<sup>43</sup>

Eleventh Circuit U.S. Court of Appeals EDR Plan, Chapter VII, Section 2A, Prohibition Against Retaliation, states: "The Court[,] any court unit executive, or their assistants, shall not retaliate against, coerce or interfere with a complainant or anyone participating in the filing and processing of a complaint." The magistrate judge incorrectly applied the law because her decision was contrary to the material evidence presented to the court in connection with the Respondents' Exhibits at the "Adverse Personnel Action Hearing," and the Exhibits the Petitioner submitted to the court for issues related to the 2002 EDR complaint. The hearing judge's decision was clearly erroneous. (Appendix 1, Tab 5).<sup>44</sup>

### **B. Dismissal of EDR/EEO Complaint Filed on March 12, 2002, on Procedural Grounds (R8-Vol 2, Tab 1).<sup>45</sup>**

1) **Timeliness, hearsay, and relevancy.** The Hearing officer based the filing date of March 12, 2002, was untimely because blanket promotions of support staffs became official on February 11, 2002. Petitioner argues that she had no official knowledge of blanket promotions of support staffs until a new SAO organizational chart was placed on each employee's mailbox on March 1, 2002. After checking the support staffs' record, only then the Petitioner

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<sup>43</sup> (Appendix 1, Tab 5).

<sup>44</sup> (Eleventh Circuit U.S. Court of Appeals EDR Plan, Chapter VII, Section 2A).

<sup>45</sup>

(Amended Pleadings to the magistrate judge's final decision after Petitioner's review of the hearing transcript. (R1-Vol 1, Tab U). Even though the Respondents insist that the deadline for filing of the EDR complaint was based on February 11, 2002, promotions of the support staffs, Petitioner argues that she sent a letter to Norman Zoller, Circuit Executive and Respondent's supervisor, the employing office was notified of the Petitioner's intent to file an EDR complaint. See letter to Norman Zoller dated March 6, 2002).

## APPENDIX — 9-C

had official knowledge of the blanket promotions of support staffs. (R—). <sup>46</sup> Petitioner asserted that the March 12 filing date was timely since she did not find out about the act until March 1, when she found out officially that the blanket promotions took place.

**2) Hearing officer's determinations were wholly inconsistent with the facts and circumstances presented to the court.** Action taken by the judicial officer, without proper consideration of the set of facts and law about the matter submitted, resulting in the miscarriage of justice. The decision of the judicial officer in favor of the Respondents, which she based wholly on the Respondents' hearing testimony at the hearing, failed to provide even the minimum degree of evidence. As the judicial officer's inherent power, discretion, and freedom to decide within the bounds of law and fact, the decision appeared bias in favor of the Respondents. CFR § 1614.107(e). (R8-Vol 2, Tab 1 pp. 2-47). <sup>47</sup>

**3) Appearance of bias at the prehearing conference, court's opening statement, and after hearing the witnesses' testimony, excluding the Respondents'.** Although Petitioner was not present at the prehearing conference, Petitioner's counsel informed Petitioner that the judicial officer already questioned the timeliness issue of the matter raised by the other party in the statement of position. The hearing officer's opening statement at the hearing was the timeliness issue of the complaint, and her prejudgment opinion of the complaint was already formed beforehand, or without due examination of all facts, issues, and evidence presented at the hearing. Due to the hearing officer's statements, after hearing the testimony of the witnesses, even before hearing the

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<sup>46</sup> (Amended Pleadings to the hearing judge's final decision after Petitioner's review of the hearing transcript. Although the court admitted 4 volumes of record of evidence at the September 25-26, 2002, hearing, the hearing judge discounted complete review of the record).

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## APPENDIX — 9-C

Respondents' testimony, and before examining the entire record of evidence, appearance of bias judgment for the Respondents was obvious. While witnesses testified, their testimony contained vague recollection of events and dates, evasive, and whose jobs are on the line because the primary Respondent is the supervisor and head of the SAO, and the ultimate decision maker and has discretionary authority to hire and fire employees. (R—). <sup>48</sup>

While retaliatory actions, a separate set of actions at issue, the hearing judge vaguely touched the issues and minimized the personal and emotional trauma the Petitioner was going through, how the Respondents treated her from the time her mother suffered the stroke in April through May 8, 2002, the date of Petitioner's mother's death. Besides retaliatory actions she received between Naomi Godfrey and Karen Sinyard, including computer surveillance since Petitioner filed her complaint, Petitioner felt so isolated at work. Employees whom the management prived about the complaint avoided the Petitioner. Nevertheless, Petitioner remained professional and civil at work and in working with others. The involuntary termination action, without good cause, which was the ultimate intentional act against the Petitioner, was malicious, egregious, and willful misconduct

4) **Conduct of the 2002 EDR process, appearance of bias, and overwhelming conflict of interest.** Upon Petitioner's request to receive a copy of the hearing transcript from the district court, the court reporter informed the Petitioner that the hearing judge expressly stated that "I defer that decision with the Circuit Executive." Petitioner's letter dated December 17, 2002, requested a copy of the transcript. Fourteen days had passed after Petitioner filed the petition for review to the judicial council, Petitioner did not receive the requested copy of the hearing transcript until an order from the chief judge was directed

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<sup>48</sup> (Id.).

## APPENDIX — 9-C

to the employing office to provide the Petitioner a copy of the transcript. Petitioner adversely inferred that attempt to coerce, delay, or interfere with the process, and the failure to provide a copy of the hearing transcript, deprives the Petitioner the opportunity to present specific arguments on appeal, about the hearing judge's decision. (R7-Vol 1, Tab 1; R6-Vol 1). <sup>49</sup>

*Chapter VII, § 7C(1) and (2) of the EDR Procedures* state that the "designated officer, acting as the hearing officer, shall hold a hearing on the merits of the complaint unless he or she determines that no material factual dispute exists. The presiding judicial officer may provide for appropriate discovery and investigation." (Appendix 1, Tab 5, p. 87; R8 Vol 2, Tab 1). <sup>50</sup>

**5) Right to impartiality.** Absence of neutral/independent party, appearance of partiality, if not actual partiality, was obscured by close relationship between the EDR coordinator, court mediator, circuit executive's office, and the Respondents, and the district court's relationship to the appellate court. Petitioner feels that due to those circumstances, she was not given a fair shake in the processing of the complaint.

**6) Petitioner had proven certain facts and they remain undisputed.** Absent contrary evidence, it became conclusive and Petitioner had established obvious case and should prevail.

**7) Burdens and degree of proof.** Petitioner believes she met the burden of persuasion by preponderance of evidence and enough set of facts on an issue, by producing evidence of making obvious to each fact necessary to

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<sup>49</sup> (Letter to Norman Zoller dated December 4, 2002; Hearing Transcript for hearing held on September 25-26, 2002, R6-Vol 1; Eleventh Circuit U.S. Court of Appeals EDR Plan, p. 88).

<sup>50</sup> (*Id.*).



## APPENDIX — 9-C

establish an apparent case. Respondents recited a machination of oral evidence, failed to develop an impartial and appropriate factual record, never came up with any reasons sufficiently to rebut all of Petitioner's allegations. The plausibility of the Respondents' testimony was highly questionable. Only review of the entire record would determine the plausibility of the Respondent's actions. (R9, 10, 11, 12). <sup>51</sup>

### **8) Respondents' evidentiary hearing testimony.**

Pleadings and defense by the Respondents contained general denial of all the allegations, but it did not contain any affirmative defenses or any statement of permissive counterclaims, plea opposing the truth or validity of all claims, or introduction of any other evidence to refute all or part of Petitioner's allegations.

**9) Merits.** Without considering the merits of the various set of facts and elements presented to the court, all the elements of Petitioner's claims that establish or refute the validity of Petitioner's course of action and qualify her to relief, the decision appeared abuse of judicial discretion.

**10) Probable cause.** The existence of facts and circumstances within Petitioner's knowledge due to the nature of her duties and length of service with the SAO, reasonably trustworthy information in themselves, warrant Petitioner or a reasonable caution, to believe that the hearing officer examined the measure of probability that an offense had been committed.

**11) Evidence and inference.** Circumstantial material evidence Petitioner presented to the court, showed a degree of proof required to examine discriminatory conduct and resultant harm contained in the complaint. Furthermore, as relevant evidence to the complaint was also

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<sup>51</sup> (Four Volumes of Exhibits presented and considered by the court at September 25-26, 2002, hearing).

## APPENDIX — 9-C

presented to the court, the court discounted them, without examining their true value to prove or disprove a proposition.

**12) Final decision of the hearing officer.** Dismissal on procedural grounds of Petitioner's complaints as mentioned in all arguments predicated judicial bias on Petitioner's complaint. § 7C(2)(f) of the Hearing Procedures state that "remedies may be provided with § 9 of this Chapter where the hearing officer finds that the Petitioner has established by a preponderance of the evidence that a substantive right protected by this plan has been violated." (Appendix 1, Tab 3).<sup>52</sup>

**13) Petition for review by the judicial council.** The judicial council should have rejected the decision of the appointed judicial officer because substantial material evidence did not support her factual determinations. Petitioner had proven above and beyond a preponderance of the evidence that she had been the subject of continuing disparate treatment and intentional discrimination. Petitioner had established the falsity of the Respondents' defense and the requisite proof of discrimination due to the pattern of practice to alter employment practice or policy, denying job/promotion opportunities to individuals on the basis of race, sex, age, religion, national origin, and discrimination in pay against ethnic Asian minorities. (R7, 8 -Vols 1 & 2).<sup>53</sup>

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<sup>52</sup> (Response to the magistrate judge's final decision on 2002 EDR complaint and Amended Pleadings to Response to magistrate judge's final decision).

<sup>53</sup> (Response to the hearing judge's final decision, and Orders of the judicial council entered on April 24, 2003; R3-Vol, Tab 7, Attachments 11 & 12).

## APPENDIX — 9-C

**C. Dismissal of EDR/EEO Complaint Filed on July 16, 2003, on Procedural Grounds (R5-Vol 1; R8-Vol 2, Tab 7; R4-Vol 1). <sup>54</sup>**

**1) Retaliation/reprisal due to the filing of the 2002 EDR/EEO complaint.** Petitioner had maintained that her involuntary termination was reprisal and continuing retaliatory action due to her filing of the EDR/EEO complaint against the SAO on March 12, 2002. The original complaint alleged employment violations under Title VII and other federal employment violations mentioned above. (R—). <sup>55</sup>

**2) Manner in which the 2003 EDR complaint was handled and processed.** From the inception of the filing of the 2002 EDR complaint, petition for review by the judicial council, 2003 Adverse Personnel Action of involuntary termination hearing held on October 29, 2003, and 2003 EDR complaint hearing held on December 8, 2003, Petitioner sincerely believes that all the proceedings were bias motivated for the Respondents.

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<sup>54</sup> (Final decision of the magistrate judge on "Hearing" held on December 8, 2003. Although the hearing was supposedly "Adverse Action Hearing," which disqualified all issues and facts raised in the 2002 EDR complaint, the substance of the "Adverse Action Hearing" was the unresolved issues raised in the 2002 EDR complaint. Compare Petitioner's Exhibits, & Petitioner's Amendment to the 2002 EDR complaint dated March 31, 2003 with Respondents' Exhibits at the "Adverse Personnel Action Hearing," held on October 29, 2003. See hearing judge's decision caption titled "Hearing Pursuant to Adverse Personnel Action Policy," and compare Petitioner's Amended Pleadings to the hearing judge's final decision after Petitioner's review of hearing transcript, which would lead one to believe how the employing office interfered and coerced with the 2003 EDR process).

<sup>55</sup> (Id.). (Hearing transcript for '2003 Adverse Personnel Action' held on October 29, 2003, see caption titled, "Hearing Pursuant to the Adverse Personnel Action Policy," compare, Petitioner's Amended Pleadings to the hearing judge's final decision after petitioner's review of the hearing transcript. R8-Vol 2, Tab 7; Defendants' Exhibits filed at the supposedly "Adverse Personnel Action Hearing," R4-Vol 1).

## **APPENDIX — 9-C**

**a) The 2002 EDR hearing was dismissed on procedural grounds without considering the substantial material evidence presented to the court.**

**b) Although the hearing held on October 29, 2003 was supposedly "Adverse Personnel Action Hearing," the substance of the hearing was inseparable from the retaliation claim under the EDR plan. As shown on the Respondents' Exhibits at that hearing, all evidence presented by the Respondents were same evidence Petitioner submitted to the judicial council for review of the 2002 EDR complaint hearing. (Compare R4-Vol 1 & R8-Vol 2, Tab 7). Petitioner's evidence of allegations of continuing retaliatory actions was the paper-trail discipline, which was imposed only to document the Petitioner's impending involuntary termination. Respondents' Exhibits were not true reasons, but pretexts to hide true reasons of Respondents' actions, toward Petitioner's retaliatory termination due to alleged performance-related matters.**

**Furthermore, dates on the Respondents' Exhibits show that the alleged performance problems were initiated as after-the-fact justification of Petitioner's retaliatory termination, were initiated while Petitioner's 2002 EDR complaint was still pending, and while Petitioner was involved in protected activity. Petitioner's "Petition for Review by the Judicial Council" for the 2002 EDR complaint hearing was filed with the designated EDR official (Virgil Alexander, Assistant Circuit Executive and under the supervision of the Circuit Executive, Norman Zoller), documents each set of facts evidencing Respondents' remarkable bad faith and unlawful actions related to the 2002 EDR complaint. (See, R2-Vol 2, Tabs 3, 5, & 7-11);**

**c) Summary of constitutional due process rights violation and abuse of discretionary authority. At the Adverse Personnel Action Hearing held on October 29, 2003, Petitioner, through Counsel, filed several motions which include: 1) Complaint Under Employment Dispute Resolution Plan, Motion to Consolidate, Motion to Clarify Issues to be**

## APPENDIX — 9-C

Determined ; 2) Motion for Leave to Conduct Discovery; 3) Motion for Change of Venue; and 4) Formal Preservation of Constitutional Objections. The court failed to act on those motions. "When a Petitioner challenges a question of law arguments not raised below are reviewed for plain error. Finding of reversible error depends on the presence of: 1) specific acts, rulings, or omissions by the lower court constituting error; 2) objections which were properly brought to the court's attention by counsel; and 3) which were accompanied by a recommended course of action." United States v. Harness, 180 F.3d 1232, 1234 (11<sup>th</sup> Cir. 1999). (R3-Vol 1, Tabs 2-5).

Since those motions filed before the court on October 29, 2003, were never acted upon at the Adverse Personnel Action Hearing, Petitioner, through Counsel, again filed another motion on December 8, 2003, for a Motion for Employment Dispute Resolution Hearing after conclusion of the Adverse Personnel Action Hearing. This motion was never acted upon by the employing office.

Likewise, on the same date, December 8, 2003, the supposedly "EDR Hearing Held for 2003 EDR Complaint," Petitioner, through Counsel filed a Motion for Objection to Hearing Held Without Notice. The referenced motion explicitly stated the manner in which the employing office disposed of the 2003 EDR complaint by being deceitful, engaging in trickery in processing the complaint, which relieved the employing office of any responsibility, accountability, and liability. It was obvious that the "2003 EDR Hearing" on December 8 was prescheduled because it was held in the judge's chambers, there was a court reporter, the employing office brought the EDR coordinator as their witness, and the employing office, themselves, decided that Petitioner's presence was not necessary at the hearing. The employing office misled the Petitioner's Counsel by asking her for a telephone conference regarding that issue.

On December 17, 2003, the hearing judge issued the final decision on Employment Dispute Resolution Plan Proceedings, which was captioned "In Re: October 28, 2003



## **APPENDIX — 9-C**

EDR Complaint of Evelyn Johnson." (R3-Vol 1, Tab 11). The EDR complaint, which according to the Decision was filed on October 27, 2003, was procedurally barred and was dismissed accordingly. (R3-Vol 1, Tab 1, p. 1).

Contrary to that filing date of October 27, 2003, Petitioner initiated the filing of the 2003 EDR complaint of her intention to pursue the EDR complaint for retaliation and reprisal for filing the 2002 EDR complaint on July 16, 2003, which was ten days before the filing-date deadline. Due to the circumstances beyond Petitioner's control, there was a lapse of time in between transition of counsels and time elements involved for further processing of the complaint. (See, R2-Vol 2, Tab 5, pp. 9-10 for further explanation, Improper Processing of the EDR/EEO Complaint).

**3) Dismissal of the 2003 EDR complaint for retaliation, which was related to the initial 2002 EDR complaint,** was improperly handled and processed because the hearing was held without notice. Petitioner has the right to be present at the 2003 EDR Hearing, has the right to rebut the testimony of employing office's witness, and has the right to seek redress under both the Adverse Action Policy and the EDR Plan of the Eleventh Circuit. Substantial material evidence presented to the court that was not reviewed in its entirety and motions filed by Counsel that were not acted upon showed abuse of discretionary authority. Pursuant to the Due Process Clause of the United States Constitution, Petitioner has the right to receive proper notice of any hearing held regarding her discrimination under Title VII and prohibited personnel action claims. Such notice was not provided to the Petitioner personally or through her Counsel prior to the hearing held on December 8, 2003.

**VIII. CONCLUSION.** For the reasons above and in the interest of substantial justice, Petitioner respectfully requests that the Court should **VACATE** the Board's decision and enter **JUDGMENT** as a matter of law for the Petitioner.

**IX. RELIEF.** Full Relief Under Title VII. Prevailing party within the meaning of section 706(k) of Title VII, Civil Rights Act of 1964, 42 USC 2000e-5(k).

Respectfully submitted,

September 9, 2004  
Date

/s/ Evelyn L. Johnson  
Evelyn L. Johnson  
Pro Se Petitioner  
6241 S. Skyline Drive  
Douglasville, Georgia 30135

(770) 489-0343



APPENDIX — 10-C

UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT  
STAFF ATTORNEYS' OFFICE  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303  
404-335-6411

March 12, 2002

Mr. Robert L. Phelps  
Employment Dispute Resolution Coordinator  
U.S. Court of Appeals, Eleventh Circuit  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303-2289

RE: Employment Dispute Resolution under Equal  
Employment Opportunity Rights and Anti-discrimination  
Rights

Dear Mr. Phelps:

My name is Evelyn Johnson and I have been employed by the Staff Attorneys' Office (SAO) for the last 13+ years. I started work as a Court Secretary on January 17, 1989, and was promoted to Secretary to Senior Staff Attorney in 1995, JSP 8/4. My position was recently reclassified on September 10, 2001, as Human Resources Coordinator, CL 26. I write to you in confidence, and regrettably, to report disturbing, serious, and gross management misconduct and activities in the SAO, directly affecting me. As a result, it is my contention that Naomi Godfrey and Karen Sinyard have grossly and unlawfully violated my employment rights due to the following:

1. Most recently, I believe, most blatant act of discrimination is that, I, only Asian/Pacific Islander, permanent support employee in this office, was denied

## APPENDIX — 10-C

promotion while "all or most" support staffs were promoted. Open positions in the office were filled, promotions of support staff, except me, and I believe the newly hired back-up receptionist and mail clerk, were noted on the official SAO organization chart, dated March 1, 2002, and distributed to all office employees. Naomi Godfrey informed me that the Personnel Manager position, "will not be filled anytime soon because we don't have any money and we don't even have money to even pay those employees we just hired."

The reorganization of the SAO was the result of the SAO self-study conducted summer of last year. Naomi Godfrey told me that I will not be promoted to the next higher grade because, "[w]e just went ahead and process your increase first." I believe Naomi Godfrey's obvious differential treatment was unfair and discriminatory because the only reason why my pay was increased last year was that I have been persistent with her in the last six years concerning my promotion that should have effected in 1996. I also believe that Naomi Godfrey's action to promote me on September 10, 2001, by "processing [my] increase first was a misrepresentation of truth. I believe Naomi Godfrey exercised discretionary abuse of authority by denying and refusing approval of my legal entitlement, to be promoted, as promised in 1995, to the next higher grade in 1996. I was qualified and exceeded required eligibility requirements by the AO at the time.

2. Naomi Godfrey's response to my e-mail dated 1/23/2002, concerning upgrade in pay was extremely prejudicial and an inaccurate assessment of what duties I actually performed. Whether Naomi Godfrey's statement that, "Toni refused to delegate these tasks to you because she insisted on doing the work herself," was truthful or not, we were so short-staffed that it was not humanly possible for me to do all the work already assigned to me. Naomi Godfrey did not even notice the amount of work I performed in personnel and recruiting for the last three years, specially last year that prompted the SAO self-study. Naomi

## APPENDIX — 10-C

Godfrey's statement on her e-mail reads:

I will be happy to talk to you about this, but please recall that you were actually given a raise and not the responsibilities when Toni was here. This was because Toni refused to delegate these tasks to you because she insisted on doing the work herself. After she [Toni] left, you began to take on the responsibilities for which you had already been receiving pay. We cannot increase the position you currently fill. In order to raise you where you are now, we compared what you do with what others in the court do and also what others in similar type jobs in other circuits do. The increase the other support is now getting should have gone in with your last increase (as those were our intentions) but did not. We just went ahead and processed your increase first. (We thought you would be pleased.)

The court asked I hire a high-level personnel specialist. When we are ready to advertise this position, you will be able to apply for it as well. I can discuss with you what we are looking for and you can decide if you want to compete for the position.

Naomi Godfrey's statement above was not only prejudicial, but very insulting and marked with misrepresentation of truth and deceit, an ongoing behavior against me since 1996. It is apparent that Naomi Godfrey never acknowledges my contributions to this office and the Court, specially when she was faced with horrendous personnel and recruiting tasks to replace separated attorneys, who left before their term ended last year. Naomi Godfrey blatantly let me know that as an Asian minority, I am not good enough to be a "high-level personnel specialist."

## APPENDIX — 10-C

I have been doing the work with minimal problems for the last three years, while no actual and specific training in the technicalities of administering personnel work was offered to me. I have only been sent to CPS training last June 2001 due to her disparate treatment of her staff. This training almost never happened and to be rescheduled the following year, which is this year, until I intercepted and called AO, myself, and told them I have been doing personnel work without training for 2 ½ years.

3. Toni Mason, SAO Budget Analyst, CL 28, took early retirement on March 30, 1999. Toni Mason's duties included personnel administration, budget, procurement, and immediate supervisor to support staff. Although I was titled Secretary to the Senior Staff Attorney, I did not perform typical secretarial duties to an office head. I was responsible for the administrative work for recruiting staff attorneys, and shared other administrative functions with two other support staffs, in support of the administrative operation, proofreading and cite checking cases for more or less 40 staff attorneys in a given year, typing court orders, jurisdictional questions, library work, receptionist work, copying cases, delivering cases to the Clerk's Office, full time back-up to Karen Sinyard when she was out and also back-up to other employees when out, and other duties and special projects assigned.

Naomi Godfrey sent an e-mail to all support staff and held a support staff meeting on April 12, 1999. Although Bill Hagan, Deputy Senior Staff Attorney at the time, was in the office, he was not invited to join the meeting. Naomi Godfrey indicated, and in agreement with all support staff, that she will not fill Toni Mason's vacant position, but Toni Mason's tasks will be distributed among all staff who were on board before April 12, 1999, so support staffs' pay could be upgraded. I had assumed most of Toni Mason's duties after she left, without change in title and pay, for about six to seven months. Without any official announcement, Karen Sinyard, Automation Specialist, CL 27, slowly moved

## APPENDIX — 10-C

into Toni Mason's vacated office around October 1999. In January 2000, Toni Mason's Budget Analyst position was reclassified and titled Office Manager, CL 28. Karen Sinyard assumed official title and pay. Karen Sinyard, white/female, has been promoted five (5) times from 1989 through 2000. I have been promoted twice during the same time frame. Although I was doing most of Toni Mason's duties, the new title Karen Sinyard occupied was never announced, advertised, and never allowed me or others the opportunity to apply. I believe Naomi Godfrey's action exemplifies unfair and discriminatory treatment to me as the only Asian, permanent employee, have been working with the SAO for 11 years at that time, and eligible and qualified to do the job, but was never considered.

4. In July 2000, James Hale, male, black, was also promoted to the next higher grade as a result of Toni Mason's retirement. James Hale started work in the SAO in July 1997, the receptionist, CL 23, and was promoted to court secretary CL 24, when another long-term support staff took early retirement in 1998. When Karen Sinyard moved into Toni Mason's office unofficially, Karen Sinyard started training James Hale in logging in and out of cases, tracking, and assigning cases to attorneys. Karen Sinyard's former position was Automation Support Specialist. She was then promoted to Automation Specialist, CL 27. I have been Karen Sinyard's sole and fully-trained back-up since she acquired that position in 1990 or 1991. I performed Karen Sinyard's duties full time when she was out of the office for two days or more, and when she was on vacation. In September 1998 or early October 1998, Karen Sinyard took an extended leave of absence due to surgery. October 23, 1998, my birthday, was the time we moved into this building. I coordinated and organized the enormous backlog of cases we had at the time, to be transported into this building. I performed Karen Sinyard's duties full time the whole time she was out on extended sick leave, about six - eight weeks.



## APPENDIX — 10-C

Karen Sinyard's former position, **Automation Specialist, CL 27**, was also reclassified (or downgraded) as **administrative case manager, CL 25**. James Hale was placed in that position, while Sinyard still maintained static duties of calculating attorneys' work production. **James Hale was promoted twice in three years** he has been here, with no prior federal employment experience. **I had worked extremely hard in this office for 11 years to be promoted twice.** The position was seemingly manipulated to fit the qualification requirements for promotion for the incumbent, James Hale. That position was also never announced, advertised, nor allowed others to apply. I feel those actions stated above are unlawful employment practice, violation of CPS rules and guidelines, knowingly approved and authorized by Naomi Godfrey to serve the needs of favored employees, and in violation of federal employment law. Again, I was denied consideration and career advancement opportunity, before Sinyard's former position, CL 27, was downgraded to CL 25, which is also my present grade.

5. The most recent act of deceit I was subjected to was during the reclassification of support staffs' positions. As a member of the support staff here and supposedly "a personnel person," I was ignored, excluded, discreetly initiated and was never informed of other support staffs' "additional duties," due to the restructuring of the office. High percentage of the support staffs' workloads had been eliminated due to the change in the review process of cases. Karen Sinyard administered personnel paperwork, although that was my job and I was here to do it, authorized and approved by Naomi Godfrey, and was sent to AO.

6. As the only Asian minority support staff, many times, I had been subjected to personal, demeaning and unwarranted innuendoes and statements directed to me by Naomi Godfrey and Karen Sinyard. I feel I have been held back, and specific training critical to my duties was offered after 2 ½ years I have been doing the work. As the

## APPENDIX — 10-C

designated "personnel person," I believe it is also part of my duties to be able to access PPS but was never trained to understand the system. I strongly believe and can fully establish, with documents, that Naomi Godfrey and Karen Sinyard's discriminatory treatment with me is everything personal and racially motivated, and has nothing to do with my overall work performance here. As an under represented member of a minority group, Asian/Pacific Islander, all claims listed above and directly affecting my employment here are in violation of my EEO rights and other federal employment rights.

I have been loyal with this office and this court for more than 13 years. I have proven myself and have improved my skills, on my own, to carry out my duties. I have had excellent work reviews since I started work here. I have worked hard without complaint, incredibly so, during hard times we faced last year. I cannot address in depth on this letter egregious mismanagement in this office, other unlawful recruiting and hiring practices, and equality in pay violation, etc.

I did not come forward sooner to address these issues, took everything I can, because I know it is easier to deal with those emotional abuses by suppressing and keeping silent. I also feel it will be emotionally intolerable to me retaliatory actions that will be directed against me. Last year, however, the court took precious time, effort, and manpower from its busy schedule to institute self-study with this office, its leadership, and management of human resources—to make this office a better place to work. I feel if I will not speak up now, as opposed to my usual reaction to Naomi Godfrey's misrepresentation of truth—in silence—I am doing disservice to the court and to myself. Further, I am not filing this claim to hurt anybody, including my co-workers, since I do not have anything against them. All I ask for is fair treatment to us all.

I request your assistance and immediate action



## APPENDIX — 10-C

concerning this matter. I am in possession of substantial materials and documents so support my claims above. I would welcome the opportunity to speak with you in person. You may reach me at 404-335-6438 (work) or 770-489-0343 (home). Thank you for your kind assistance.

Respectfully submitted,

/s/ Evelyn Johnson

P.S.

Enclosed are proposed organization chart Naomi Godfrey had presented to the court, official SAO organization chart dated March 1, 2002, organization chart showing grades when the recruiting manager was hired, and Naomi Godfrey's e-mail dated 1/23/2002, which I will also include as part of exhibits I am submitting to the court.

APPENDIX — 10-C

UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT  
STAFF ATTORNEYS' OFFICE  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303  
404-335-6411

April 12, 2002

**VIA E-MAIL AND ORIGINAL  
HAND-DELIVERED TODAY**

Dear Mr. Phelps:

As outlined under the Employment Dispute Resolution Plan, Section 5C, Procedures, and 5D, Duration period for the consultation, and referencing the e-mail you sent me dated March 14, 2002, with time stamp 03:34 p.m., the date you received my complaint, within the 30-day period, I respectfully submit this letter to pursue to the next level of the process. I request mediation in accordance with Section 6 of the EDR Plan.

I was not satisfied with the outcome of our personal conference with Naomi Godfrey on March 25, 2002, as those issues I claimed were addressed during our meeting. (See attached 4-page consultation conference report). You asked to meet with me personally on Monday, April 1, 2002, to discuss the "reconstructed pay" that Cheryl Vessels prepared to present to me. I told you that was not the only issue I raised in my claim, and you sounded apprehensive to discuss the rest of the claims with me. I appreciate all your help and the efforts you put forth in this matter.

## APPENDIX — 10-C

I have been sick last week and part of this week that I was unable to meet with you last Monday, April 8, 2002. I called your office between 8:30 a.m. and 9:00 a.m. Monday, the 8<sup>th</sup>, but according to Suzette Williams, you were out in a meeting with Mr. Kahn. I asked Suzette Williams if I could leave a message for you. Suzette Williams then returned my call and left me a message on our voice mail machine at home between 9:30 a.m. and 10:00 a.m. while I was in the restroom. I immediately called Suzette Williams. According to Suzette Williams, you asked her to call me, and there was only one question I need to answer. "Did you do it?" and the answer was either "yes or no." I told Suzette Williams, I don't really know what the question pertains to, and I rather speak with you. I again left a message for you to call me, but I did not hear from you.

Yesterday, I received your e-mail with date and time stamp of April 7, 2002, Sunday, 11:55 a.m., asking me when I could bring the additional documentation to your office.

During the mediation process, I am invoking my right to representation, as specified under Section 2B of the Plan. I do plan on taking annual leave sometime next week to retain my representation.

I look forward to getting this matter resolved soon, and again, thank you very much for your assistance.

Sincerely,

/s/ Evelyn Johnson

### Attachments:

Exhibit D2 and copy of original claim  
Personal conference discussion report - 4 pages  
Amendment to the EDR claim filed 3/14/02

APPENDIX — 11-C

Evelyn L. Johnson  
6241 S. Skyline Drive  
Douglasville, Georgia 30135  
Tel: (770) 489-0343 (H) — (404) 335-6438 (W)

December 14, 2001

Naomi G. Godfrey  
Senior Staff Attorney  
Eleventh Circuit U.S. Court of Appeals  
Staff Attorneys' Office  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303-2289

Dear Naomi:

After careful thought and consideration, I submit this cover letter and updated resume in application for the Manager for Recruiting, Professional Development & Training now open with our office.

As you know, I have been working for the Eleventh Circuit Court of Appeals, Staff Attorneys' Office for 13 years this coming month. I am honored to say that 13 years of my federal service employment, which is into my twentieth, this year, has been dedicated to this office. I believe I am qualified and highly capable to accept this new challenge and welcome the opportunity.

During my career, I have gained substantial experience in areas of personnel staffing, recruitment, administrative, marketing and sales of real estate and financial service and products, in both federal government service and the private sector. I am competent and an effective negotiator, and skillful in interpersonal dealings with people of different status and back ground. Moreover, I have excellent organizational skill, and I am extremely

## APPENDIX — 11-C

resourceful. I am also able to absorb complex and theoretical materials, hard working and dedicated, and logical and rational in my approach to assignment and challenges.

Since Toni Mason retired on March 31, 1999, I had taken on added responsibilities in personnel staffing and recruitment. I became the main office resource in the staffing and recruitment area of our court unit. Although I received no formal training in personnel staffing, personnel actions' processing, and other personnel related duties until June 2001, I am able to contribute to the overall mission in the human resource function of the office. More important, during this past summer, the office recruited, hired, staffed, and separated majority of our office total workforce of 96 employees for fiscal year 2001, that included 40 new legal employees plus two nonlegal transfers, and 31 legal and nonlegal staff who separated.

Beginning in 1991, I had taken on added responsibilities helping Toni Mason in recruiting function of the office, which had grown tremendously in the last ten years. In addition to this and other secretarial function of the office, I was the only one fully trained to back up Karen Sinyard to carry on case management function in the office during her absences of more than two days, until sometime in year 2000.

Although I have not been involved in the decision-making process of hiring office staff, my almost 13 years of experience with the Court gives me an edge in understanding the office function of our court unit, its office culture, and its goal of hiring exceptional attorneys to contribute to the overall mission of the court.

Before joining the Staff Attorneys' Office in January 1989, I worked for the personnel office of the Veterans Administration Regional Office in Atlanta under the competitive service. I also worked in the civilian personnel office for the Marine Corps Base while in Okinawa, Japan.

## APPENDIX — 11-C

In both capacities, I gained invaluable administrative knowledge and experience in the hiring, personnel staffing, and EEO processes under the competitive service employment in the federal government.

Although our office is mainly governed by the judiciary regulations, policies, and procedures, I believe my knowledge, skills, and abilities in the rigors of governmental employment in both sectors of the federal government, will serve and provide significant contribution to the challenges of this newly created position. In addition, my resourcefulness and creativity will enable this office find ways of attracting and recruiting high-demand professionals, while ensuring compliance with the guidelines of the Guide to Judiciary Policies and Procedures.

Worthy of mentioning, I am self directed and motivated. Since my children are adults and both independent now, I found time to better myself. I believe in continually learning new things that would eventually help me grow either personally or professionally, and believe in helping others better themselves as well. For the last two years, I have spent numerous productive evening hours after work and on weekends studying finance, its application to our lives, and its applicable federal and state laws and regulations. Thus, I now have thorough understanding of finance and well prepared for retirement. I believe the knowledge I have gained and the money I spent to educate myself would be added value to the service I provide to the office.

As shown on my resume, my work experience establishes not only stability but also demonstrates dedication, loyalty, motivation, initiative, and ability to work independently or as a team member, and get the job done. I have the demeanor, and believe that I have the ability to accomplish the challenges required of the position.



**APPENDIX — 11-C**

Thank you for your consideration and the opportunity  
to serve the court.

Sincerely,

/s/ Evelyn Johnson

Enclosure



## APPENDIX — 11-C

Evelyn L. Johnson  
6241 S. Skyline Drive  
Douglasville, Georgia 30135  
Tel: (770) 489-0343 (H) — (404) 335-6438 (W)

---

### EXPERIENCE

Staff Attorneys' Office, U.S. Court of Appeals,  
Eleventh Circuit, 56 Forsyth Street, NW, Atlanta, Georgia  
**September 2001 — Present, Personnel Coordinator**  
(same duties immediately below)

**1995 — September 2001, Secretary, Senior Staff  
Attorney/Personnel/Recruiting**

- Coordinate ongoing recruitment of staff attorneys and primary personnel support in the Staff Attorneys' Office (SAO); advise hiring committee panel and other supervisors on application of relevant qualification standards;
- Prepare vacancy and promotion announcements and advertise according to the needs of the SAO; review staff attorney applications and determine if applicants meet qualification requirements; update and prepare new position descriptions;
- Maintain staff attorney and support staff applications and responsible for developing, completing, and reporting annual Fair Employment Practices Report submitted to the Administrative Office of the U.S. Courts (AO);
- Process a variety of personnel and payroll actions such as appointments, promotions, separations, terminations, within-grade increases, quality-step increases; changes to health and life insurance, and withholding taxes;

## APPENDIX — 11-C

- Track employee due dates for promotions, performance evaluations, and within-grade increases; advise Senior Staff Attorney and other supervisors on personnel matters; conduct new employee orientation; prepare personnel paperwork for separating employees; provide advice and assistance to employees on appropriate procedures for filling out personnel-related forms and other personnel functions;
- Serve as primary liaison to the AO concerning SAO employees regarding payroll and personnel matters; establish and maintain a variety of personnel related files, including personnel records and standard personnel forms.

**January 1989 — 1995, Court Secretary** (See above — same office and employer)

- Provide administrative support for seven attorneys; transcribe attorneys' dictation of case memoranda, involving specialized legal research, including motions, and other court related correspondence;
- Edit, proofread, and cite check case memoranda using Westlaw and Blue Book;
- Screen sentencing guidelines' cases submitted to the office and determined if record submitted is complete, analyze if appellant(s) sentence is procedurally considered a short sentence and notify the assigned attorney of its priority;
- Coordinate ongoing staff attorney recruitment; receive, screen, and maintain files for staff attorney application and prepare response letters to applicants; handle advertising and disseminating notice of vacancy throughout the Eleventh Circuit, bankruptcy and district courts, and law schools; answer routine calls from attorney applicants;

## **APPENDIX — 11-C**

- Prepare EEO reports and training materials for newly hired staff attorneys;
- Maintain record, post, and update library legal materials and references; contact and communicate with Circuit Library when purchasing books for SAO; maintain a tickler file for books ordered;
- Cross-trained and act as back-up for other employees as required; prepare docket sheets for incoming/outgoing cases and enter onto computer for case management purposes; obtain, gather, and organize necessary data for producing recurring internal case status reports using the computer; print, make copies, compile, and distribute reports to the Senior Staff Attorney and supervisory staff; search and obtain information in files on request; maintain files for reports and original copies of work [case memoranda] produced by staff attorneys;
- Provide support to Administrative Assistant to Senior Staff Attorney do routine or special project assignments as needed.
- 

### **OTHER EXPERIENCE**

**1999 — Present, Primerica Financial Services, 2400 Herodian Way, Suite 320, Smyrna, Georgia**

- Part-time independent contractor representing Primerica Financial Services as a Personal Financial Analyst (PFA); hold professional licenses in: Series 6 & 63 Securities License; Life, Accident & Sickness, and Variable Annuity Licence (Georgia); and Mortgage Broker License (Georgia);
- Intensive weekend training in all areas of marketing Primerica financial products and services, in compliance with state and federal laws;

## **APPENDIX — 11-C**

- Assist clients in identifying their financial needs and goals with the use of Financial Needs Analysis (FNA) questionnaire so that clients can make informed financial decisions in managing their money;
- Input clients' answers to FNA onto computer; information provided by clients generates computerized accepted assumptions and reasonable estimates based on clients' present financial situation and today's economic environment;
- Analyze those assumptions and estimates, and develop and recommend workable financial solutions based on clients' future financial goals—whether to establish college education funding for their children, debt reduction, and financial independence at retirement, or both, based on clients' Financial Independence Number (FIN).

### **PAST EMPLOYERS**

**1987 — 1988:** VA Regional Office, Personnel Division,  
730 Peachtree Street, NE, Atlanta, Georgia

**1986 — 1987:** Coldwell Banker Residential Real  
Estate Sales, Douglasville, Georgia

**1972 — 1983:** 1962<sup>nd</sup> Communications Group, USAF  
Base, Kadena Air Base, Okinawa, Japan; Consolidated  
Civilian Personnel Office, MCB Camp S. D. Butler, Okinawa,  
Japan; Assistant Chief-of-Staff, Marine Corps Base, Camp S.  
D. Butler, Okinawa, Japan; Georgia Kraft Company,  
Douglasville, Georgia; Office of the Provost Marshall, U.S.  
Naval Base, Subic Bay, Philippines; Ship Repair Facility,  
U.S. Naval Base, Subic Bay, Philippines

- Performed various and general administrative, secretarial, and clerical duties;

## **APPENDIX — 11-C**

- Knowledge and experience in hiring procedures in federal government personnel recruitment;
- Technical and administrative knowledge and experience in residential real estate sales;
- Administrative and clerical knowledge and experience in U.S. Air Force telecommunications system;
- Processed personnel, administrative, and clerical paperwork involving trucks and heavy equipment machinery on machinery maintenance for a paper manufacturing company in Georgia;
- Processed paperwork on traffic citations, vehicular accidents, and assisted a traffic court judge in traffic court hearings, under U.S. jurisdiction, for the security office of a U.S. naval base military installation in the Philippines;
- Processed clerical paperwork on ship repairs for a U.S. ship repair facility with a U.S. naval base military installation in the Philippines.

### **EDUCATION**

- BA, Business & Management, University of Maryland, Asian Division, 1986
- ASA, Associate in Secretarial Administration, University of the East, Manila, Philippines, 1971

### **PROFESSIONAL LICENSES AND CERTIFICATES**

- Series 6 & 63 Securities License — 2000 to Present, Active

## **APPENDIX — 11-C**

- Life, Accident & Sickness, Variable Annuity License — 1999 to Present, Active, State of Georgia #AGR562931
- Mortgage Broker License — 1999 to Present, Active State of Georgia #15296
- Real Estate Residential Real Estate License — Inactive, State of Georgia
- American Institute of Real Estate, Post Licensing I & II, Marietta, Georgia, 1986
- 

### **SKILLS**

- Proficient in WP and MS Word;
- Possess strong oral and written communication skills;
- Adapt well to new surroundings; well-rounded personality; highly organized and efficient;
- Bicultural and bilingual, and understanding knowledge of Japanese and Spanish.

### **PERSONAL**

- Cooking, interior decorating, flower arranging, and gardening;
- Travels include: southeastern and northwestern United States, Canada, Korea, Taiwan, Hongkong, China, Okinawa, and Philippines;
- Aerobics.

## APPENDIX — D

[1 — 13]

	NO. OF PAGES
Index	4
D — 1	3
D — 2	2
D — 3	4
D — 4	5
D — 5	1
D — 6	1
D — 7	3
D — 8	2
D — 9	10
D — 10	4
D — 11	2
D — 12	1
D — 13	1

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APPENDIX — D

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

Evelyn Johnson, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 Staff Attorneys' Office for the )  
 U.S. Court of Appeals for the )  
 Eleventh Circuit, )  
 )  
 Employer. )  
 \_\_\_\_\_ )

DEFENDANT'S EXHIBITS

10/29/2003

PLAINTIFF'S COPY

APPENDIX — D

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

Evelyn Johnson, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 Staff Attorneys' Office for the )  
 U.S. Court of Appeals for the )  
 Eleventh Circuit, )  
 )  
 Employer. )  
 \_\_\_\_\_ )

DEFENDANT'S EXHIBITS

10/29/2003

Tab	Hearing Exhibit #	Date	Description
1	Exh. 1	3/21-25/02	E-mails exchanged between Naomi Godfrey and Evelyn Johnson re: Training Opportunity for Human Resources Staff
2	Exh. 2	3/18-22/02	Evelyn's Summary of Work done Per Naomi

# APPENDIX — D

Tab	Hearing Exhibit #	Date	Description
3	Exh. 3	04/08/02	E-mail from Sara Gilibert to Evelyn Johnson re: Project Assignments
4	Exh. 4	12/4-6/02	E-mails exchanged between Sara Gilibert and Evelyn Johnson re: Separation Meetings and Paperwork attaching Letter from Johnson to Gilibert
5	Exh. 5	01/30/03	E-mail from Karen Sinyard to James Hale and Evelyn Johnson re: computer Log-in Password
6	Exh. 6	02/05/03	Memo from Sara Gilibert to Evelyn Johnson re: E-mails
7	Exh. 7	02/05-06/2003	E-mails exchanged between Evelyn Johnson, Sara Gilibert and Karen Sinyard re: Bruce Vail's Sick Leave and Computer Password
8	Exh. 8	02/06/2003	Letter from Sara Gilibert to Evelyn Johnson re: Letter of Warning

## APPENDIX — D

Tab	Hearing Exhibit #	Date	Description
9	Exh. 9	02/24/2003-03/10/2003	Various e-mails regarding Evelyn Johnson's Computer and Printer
10	Exh. 10	03/12/2003	Memo from Sara Gilibert to Evelyn Johnson re: Referral to Employee Assistance Program
11	Exh. 11	06/20/2003	Letter from Naomi Godfrey to Evelyn Johnson re: Termination
12	Exh. 12	01/04/1989	Employment Agreement for Evelyn Johnson
13	Exh. 13	01/2002-07/2003	Calendar Documenting Time Off for E. Johnson

[Pet.'s Note: See Court Order on Appendix 5-C, final decision on 2002 EDR complaint entered 4/24/2003. Respondents' exhibits were after-the-fact justification, manufactured retaliatorily while Petitioner was involved in protected activity, to justify Petitioner's impending retaliatory termination.

March 12, 2002	—Filed EDR complaint
April 24, 2003	— Final decision on 2002 EDR complaint
June 20, 2003	—Petitioner's retaliatory termination].

APPENDIX — D-1

Evelyn Johnson  
03/25/2002 08:15 AM

To: Naomi Godfrey  
/CA11/11/USCOURTS@USCOURTS

cc: Karen Sinyard  
/CA11/11/USCOURTS @USCOURTS  
Sara Gilibert  
/CA11/11/USCOURTS @USCOURTS

Subject: Re: Training Opportunity for Court Human  
resources Staff

---

Naomi Godfrey  
03/22/2002 06:46 PM

To: Evelyn Johnson  
/CA11/11/USCOURTS @USCOURTS

cc: Karen Sinyard  
/CA11/11/USCOURTS @USCOURTS  
Sara Gilibert  
/CA11/11/USCOURTS @USCOURTS

Subject: Re: Training Opportunity for Court Human  
resources Staff

You are the only person I am asking this information. As you know, the duties of all support staff have been reorganized. Based upon recommendations from the self-study and approved by the court in October. There are now three managers or second-level supervisors in the office: Mori, KBS, and Sara Gilibert. Sara is over recruiting, hiring, and personnel (you and Jackie Williams), and as such, she is responsible for the day to day of that team and needs to know what your duties are. When I met with you and Sara during her orientation here, I asked that you give

## APPENDIX — D-1

that information to her so that the personnel work could be organized between you and Jackie Williams as your backup. Subsequently, Sara also asked you to let her know what you are working on. To date, you have not responded fully to either request.

**As to other support staff, most of their previous duties were eliminated altogether pursuant to the self-study, and they are now in the process of training to take on other responsibilities. As such, we are well aware of what they are doing and how much time it takes to do it.**

I hope you understand that in spite of current circumstances, the work of the office must continue. Sara cannot competently do her job unless you cooperate by doing yours. **I am not reluctant to insist that you do so.**

Naomi Godfrey  
Senior Staff Attorney  
Court of Appeals  
56 Forsyth Street  
Atlanta, Georgia 30303  
404-335-6411

---

Evelyn Johnson  
03/22/2002 11:18 AM

To: Naomi Godfrey  
/CA11/11/USCOURTS@USCOURTS

cc: Sara Cilibert  
/CA11/11/USCOURTS@USCOURTS

Subject: Re: Training Opportunity for Court Human  
resources Staff

## APPENDIX — D-1

Thanks, Naomi. I will give you and Sara what is involved in this training.

Your request of written summary of what I did this week, and beginning Monday, March 25 that I keep an hourly record of what I do for the week, I will be glad to oblige, but am I the only one you are asking to do this or all support staff? Thanks.

Evelyn

Defendant's  
Exhibit

1



## **APPENDIX — D-2**

### **Evelyn's Summary of work done per Naomi**

**Week of March 18 - 22, 2002**

March 22, 2002, Friday. Naomi asked me to summarize what I did this whole week concerning my work, to be submitted by the end of the day. I responded to Naomi and asked if I am the only one being asked of the summary. I did not get a response from Naomi by the end of the day.

Between Monday through Friday of this week, I did basically catching up of personnel paperwork that were lower in priority, such as filing, updating employee personnel lists on the computer, and entered each personnel action on all employees, as indicated on the AO 250 Forms I received this week. I separated the copies, typed up an explanation of the form addressed to all staff, and individually placed employee copy of the form in an envelope and distributed to all staff.

I had made several phone calls to assist Reese on his problems with his health benefits coverage. Reese has been deducted premiums from his paycheck since the time health coverage was effected. According to Reese, however, he has not received anything from the insurance provider. I placed different calls to his insurance provider to find out who handles this situation. I was informed that the insurance provider has not received the SF 2809, which was faxed and original was mailed to AO.

I attempted to get in touch with Ed Pike a few times by phone but was not able to talk to him. I sent Ed Pike an e-mail concerning Reese's health insurance coverage. Ed Pike answered my e-mail asking me to fax our copy of Reese's enrollment form to the insurance provider to rectify their error.

This was not the first, second, or third time I had to do this for employees. It happens quite often. I also had to

## APPENDIX — D-2

do the same thing with Stephani concerning her health insurance coverage. I also had to do the same thing for Jonathan Miller, who had made changes on his health benefits during open season from Mail Handlers to Blue Cross but the insurance provider's record has not been updated.

I prepared other paperwork and forms for the new employee, David Markese, who started Monday, March 25, 2002.

Since we are not hiring and it was pretty slow in my area, I read the AO Human Resources Manual and the Eleventh Circuit Personnel Manual.

Defendant's Exhibit <u>2</u>
------------------------------------

APPENDIX — D-3

Evelyn Johnson  
03/22/2002  
11:18 AM

To: Naomi Godfrey  
/CA11/11/USCOURTS  
@USCOURTS  
cc: Sara Gilibert  
/CA11/11/USCOURTS  
@USCOURTS

Subject: Re: Training Opportunity for Court Human  
resources Staff

Thanks, Naomi. I will give you and Sara what is  
involved in this training.

Your request of written summary of what I did this  
week, and beginning Monday, March 25 that I keep an  
hourly record of what I do for the week, I will be glad to  
oblige, but am I the only one you are asking to do this or all  
support staff? Thanks.

Evelyn

---

Naomi Godfrey  
03/22/2002  
10:55 AM

To: Evelyn Johnson  
/CA11/11/USCOURTS  
@USCOURTS  
cc: Sara Gilibert  
/CA11/11/USCOURTS  
@USCOURTS

Subject: Re: Training Opportunity for Court Human  
resources Staff

Please summarize for me what is involved in the  
training, when and where it takes place, and how long it is.  
Also, let me know how the training will benefit the office.

Sara has asked that you give her a list of things you  
are doing. By the end of the day today, please give her a

APPENDIX — D-3

written summary of what you did this week. Beginning Monday, March 25, please keep an hourly record of what you are doing for the week.

Let me know if you have questions. tx.

Naomi Godfrey  
Senior Staff Attorney  
Court of Appeals  
56 Forsyth Street  
Atlanta, Georgia 30303  
404-335-6411

---

Evelyn Johnson	To: Naomi Godfrey
03/21/2002	/CA11/11/USCOURTS
03:16 PM	@USCOURTS

Subject: Re: Training Opportunity for Court Human resources Staff

Naomi:

The memo on the website below from AO is addressed to court unit executives. HRD is seeking volunteers to participate in the trial of SkillSoft web-based training courses. I would like to volunteer to participate in the HRD effort. The response due date is March 25, 2002. Thanks.

evelyn

-----Forwarded by Evelyn Johnson-----  
-/CA11/11/USCOURTS @USCOURTS on 3/21/2002 03:05 PM--

Human Resources and Statistics Broadcast

APPENDIX — D-3

To: Recipient List Suppressed  
cc: (bcc: Evelyn Johnson  
/CA11/11/USCOURTS@USCOURTS

Subject: Training Opportunity for Court Human resources  
Staff

---

Sara Gilibert                      To: Evelyn Johnson  
04/08/2002                      /CA11/11/USCOURTS  
11:18 AM                      @USCOURTS

Subject: Project Assignments

Evelyn-

Thank you for summarizing what you were working on the week before last. It really helps me to keep track of what is on your plate at a given time so I can best assess your ability to take on additional projects. Thus, please continue to provide me with these weekly summaries.

I was very surprised so see that it has been "slow in [your] area." Should this happen in the future, please let me know immediately as there is a great deal of work to be done that can benefit our division and the Staff Attorneys' Office as a whole.

I would like you to write out steps you follow in processing new employee appointments (including the preparation and processing of pre-employment paperwork and offers of employment) and attach copies of the actual forms or other documents used in this processing. Please follow the same format you used in writing out the steps you take in processing performance evaluations.

Also, please review the new Staff Attorneys' List I had drafted, and check and/or update the information it contains

## APPENDIX — D-3

(I have left a copy of the list in your chair).

Finally, please go through the personnel files and make sure they are up to date and organized in the manner set forth in Sections 1.1 through 1.5 of the Human Resources Manual (I have left a copy of Sections 1.1 through 1.5 in your chair).

Please respond to this e-mail when you return to the office with an estimated time-frame for completion of each project, so I can plan for other project assignments accordingly.

Thank you.

Defendant's Exhibit <u>3</u>
------------------------------------

APPENDIX — D-4

Evelyn Johnson      To:    Sara Gilibert  
12/06/2002            /CA11/11/USCOURTS  
01:11 PM             @USCOURTS

Subject: Re: Separation Meetings and Paperwork

Please see attached.

Sara.wpd

---

Sara Gilibert      To:    Evelyn Johnson  
12/06/2002            CA11/11/USCOURTS  
09:10 AM             @USCOURTS

Subject: Re: Separation Meetings and Paperwork

It would be a great help if you would respond to e-mails such as the one below. I have sent you several recently and have not gotten any responses. Please simply let me know that the e-mail was received and that any requests set forth therein will be taken care of. If, for some reason, you will not be able to complete something that day, please also state that in your response and include a date upon which you expect to complete it. There are several things I have asked you to do in the past few weeks and, to my knowledge, they have not yet been completed (i.e. updating charts I forwarded to you, making sure each file contains a clean resume and complete transcript, sending out voluntary leave donation request)

-----Forwarded by Sara Gilibert/CA11/11/USCOURTS  
@USCOURTS on 12/06/2002 08:59 AM -----

Sara Gilibert      To:    Evelyn Johnson  
12/04/2002            CA11/11/USCOURTS  
12:54 PM             @USCOURTS



## APPENDIX — D-4

Subject: Re: Separation Meetings and Paperwork

Please set up a meeting time with Janna so you can go over her separation paperwork. Please meet with her before Friday (her last day) and have the paperwork forwarded to the AO no later than the COB Friday. I do not want attorneys leaving without having met with you and having gone over their paperwork unless absolutely unavoidable. We had a lot of problems arising from Amy Fout's separation that ended up delaying both her last paycheck and lump sum payment. Jackie ended up having to send another original to the AO this past Monday so they could process the lump sum payment. Needless to say, this kind of delay should not happen again. Also, in meeting with attorneys who are leaving the office, please inform them that their last paycheck will not be directly deposited but instead will be sent to Cheryl Vessels and then forwarded to them. They need to know that this process takes longer than what they are used to with direct deposit and need to financially plan accordingly. Thanks.

Defendant's  
Exhibit

4

## APPENDIX — D-4

12/6/02

Sara,

I resent the fact that you keep getting on my back to know if the job is done or not. Before you even came to work here for the last 13 years, 10 months, and 19 days, nobody had been keeping tabs if my work has been done or not, that is, with more work and less help. I do have initiative and self-directed and I get the job done. I am not a child and do not have to be told twice, and most of all, I do resent your attitude for doing that. Let me explain to you the things you asked me to do below.

**[Pet.'s Note:** The manner and the tone of this statement directed to Sara Gilibert showed that the Petitioner has had it, and reached her breaking point. Since March 2002, Petitioner had been subjected to the Respondents' constant work harassment. While Petitioner singlehandedly performed duties in personnel and staff attorney recruiting for several years, those duties were now performed by two employees, Jackie Williams, black/female, CL 25, and Sara Gilibert, white/female, CL 30. Although Petitioner never had any performance problems before filing the EDR complaint, had been stripped off her duties without cause, the Respondents were determined to embarrass and humiliate the Petitioner by treating her like a child or a brainless moron that they had to harass her and monitor every minute detail of Petitioner's "ministerial" (as Naomi Godfrey refers to Petitioner's duties) work.]

1. Voluntary leave donation request. You asked me to do it the week before the Thanksgiving holiday. I told you I was in the middle of completing the big EEO report to be submitted to Nancy Burnham. You have no clue how long it takes to put together that report, specifically, if you go by the list manually. You may ask Cheryl Vessels or Nancy Burnham if you want to. I finished that report, submitted it for signature, and you told me that you have to edit the

## APPENDIX — D-4

narrative before submitting to Nancy Burnham. Very little editing was done from the original narrative, and that report, the statistics itself, is most important to balance, and must all be correct since I have not heard from Nancy.

2. After I worked on that, we have had two attorneys and a support staff who resigned, and I have to prepare their paperwork. I completed all separation paperwork before I took the time off for the Thanksgiving holiday and advised Jackie what she needed to do with them.

3. I have arranged to talk to Janna today at 3:00 p.m. before she separates. It is not mandatory that her separation papers leave the office the same day of her separation date. The following day is fine as long as there is nothing out of ordinary concerning the separation of the employee, such as leave-without-pay. And for your information, I spoke with Amy Fouts on her last day of work. The paperwork originating from here were sent to AO timely. In speaking with Ed Pike, someone at the AO processed her paperwork, which I don't have any control, and for your additional information, that was not an out of ordinary event. AO calls here all the time for copies of personnel forms asserting they did not receive them, if we do not have working copy here, then you are back to square one. I can understand AO sometimes because of the bulk of paperwork they have to handle all the time.

Furthermore, I tell separating attorneys the procedure concerning their last paycheck and lump sum money and when approximately they should receive the checks. I have been doing this for almost four years, and granted that there could be snafues to occur, don't blame it here. I am not afraid to accept fault if I am at fault, but I refuse to take someone else's fault. And if the attorney complained to you otherwise, in this particular situation, Amy Fouts, that is her problem. I told her all that information but she was not all here, did not even want to sit down, and just stood up beside me. She did not listen to what I told her. Like you said, Jackie ended up sending

#### APPENDIX — D-4

another AO 193, and our file in Amy's file showed that her paperwork was done.

4. I am sure you wonder why I have not sent the paperwork for the new hire yesterday afternoon. I tried to open that drawer of forms in the file cabinet but it was jammed and would not open. The only way it opened this morning was I had the building maintenance guy to force it open this morning. Her paperwork has been sent out.

5. The personnel files, resumes, and transcripts you are talking about, I had revisited all those files several months ago and they were all complete.

6. The chart you are talking about, Cathy Hester puts it out, why am I to update it? She should update that every time there are changes on her list. I forward her a copy of employee's new address if and when employees notify me they have moved.

7. Last, I know I have not done the voluntary leave donation request. It was put on hold on the bottom of my priority, and I was out on leave for a week. That is the next thing I will do. One thing I would like to mention is that Jackie now works under you. Regardless of whether she is busy copying cases, Naomi already asked her not to do, that is the other supervisor's responsibility to ask another staff to do. Some things that are pressing and needs to be done right away and I am tied up with other work to do, ask Jackie. She is trained to do them, and if she has questions, I will be glad to answer.

8. Last but not least, if you ask me to do something, consider it done. You have not been here long enough to know everything, and to preserve harmony, please stay off my back.

Thank you.

/s/ Evelyn

Signed

APPENDIX — D-5

Karen Sinyard  
01/30/03  
08:49 AM

To: James Hale  
/CA11/11/USCOURTS  
@USCOURTS,  
Evelyn Johnson  
/CA11/11/USCOURTS  
@USCOURTS,  
Keven Friedman  
/CA11/11/USCOURTS  
@USCOURTS,

Subject: Computer log-in password

Naomi has requested that I make sure I have everyone's computer password and in reviewing my password list I do not have you(r) current log-in password. Please send me your password as soon as possible. I do not need your e-mail password. Thanks,

KBS [Karen B. Sinyard]

I did not receive a response from Evelyn — I did not receive a return receipt so she evidently did not even open the message./kbs

Defendant's Exhibit <u>5</u>
------------------------------------

APPENDIX — D-6

UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT  
STAFF ATTORNEYS' OFFICE

---

MEMORANDUM

DATE: February 5, 2003  
TO: Evelyn Johnson  
FROM: Sara Gilibert  
SUBJECT: EMAILS

This memorandum serves as a directive to please open and respond to e-mails from all Court personnel in a timely manner. As I have discussed with you on previous occasions, it is imperative that you check your email account on a frequent basis throughout the day, starting with when you first arrive to work. If you receive an email that requests something from you, please respond immediately. If, for some reason, you cannot respond with the information that an email requests from you (or cannot perform the task that an email requests of you), you must nevertheless timely respond to the sender either by return email or by telephone to (1) let him/her know you received the email and (2) let him/her know your estimated time frame for providing the information (or completing the task) requested by email. Above all, there should never be an instance where you simply do not open an email from another employee of this Court.

Despite discussing this issue with you in the past, I have been informed that it continues to be a problem. Please take immediate steps to correct it. Should you have any questions or comments regarding the above, please do not hesitate to call or see me.

Defendant's  
Exhibit  
6

SLG/slg



APPENDIX — D-7

Evelyn Johnson

02/06/2003

11:58 AM

To: Sara Gilibert  
/CA11/11/USCOURTS @USCOURTS  
cc: Karen Sinyard  
/CA11/11/USCOURTS @USCOURTS

Subject: Re: Bruce Vail's Sick Leave

Sara,

I know I have not responded to Karen's requests for password because I know if she needs to, she already has access to my computer and printer. I have had problems with my computer a while back being extremely slow, freezing, making noises at the hard drive as if it is doing a hard-drive backup while I am not even working or doing anything with the computer. I made changes on my computer settings and properties but it keeps switching back without me making any other changes and to the point that I could not access the computer at all. Last week, I had problems converting an attachment that Patty sent us, which was a PDF file. Although it showed on my desktop that I have the Adobe Acrobat software, the file would not convert. I then realized that I was operating mainly on my c:drive and all documents I have were copied onto c:drive but the attachment that Patty sent us was on f:drive that for whatever reason it just would not convert.

My hard drive was replaced last week, and from what the automation employee told me, WE are the only ones supposed to know our password even the automation employees don't have our password, and we are not to give it out to anyone if there is nothing on the computer that another employee would have any need to access. Nevertheless, Karen still has access to my computer without me giving her my password. If it becomes such a big issue,



**APPENDIX — D-7**

Karen can remove the computer out of my office. Thanks.

---

Sara Gilibert

02/06/2003

10:09 AM

To: Evelyn Johnson  
/CA11/11/USCOURTS @USCOURTS

Subject: Bruce Vail's Sick Leave

Thanks for your email, Evelyn. The below email was not the one I was referring to, though. There have been a couple of e-mails sent to you requesting your computer password. It is important that the office has a master list of all current passwords, and you are the only one who has yet to respond with one. Please look for these specific e-mails, and respond to them with your current password as soon as possible.

Thanks, and call/see me with any questions you may have.

Sara

---

Evelyn Johnson

02/05/2003

02:22 PM

To: Karen Sinyard  
/CA11/11/USCOURTS @USCOURTS  
Sara Gilibert  
/CA11/11/USCOURTS @USCOURTS

Subject: Bruce Vail's Sick Leave

APPENDIX — D-7

Sara,

If this is the email you are referring to, I thought it was in reference to the sick leave balance that I already gave Karen Sinyard, but I was wrong. Anyway, I already sent an email to AO requesting a copy of the official form to be sent to us. I was going to let you all know once I receive the response from the AO. Sorry, old habits are to break. Thanks.

ej

Defendant's  
Exhibit

7

**APPENDIX — D-8**

**UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT  
STAFF ATTORNEYS' OFFICE**

---

February 6, 2003

**VIA HAND DELIVERY**

Ms. Evelyn Johnson  
United States Court of Appeals  
Eleventh Circuit  
Staff Attorneys' Office  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

Dear Evelyn:

This is a letter of warning and constitutes an action that is based on your refusal and/or failure to comply with an appropriate instruction from your supervisor.

I have specifically asked you to forward your current computer password to the office's Administrative Manager, Karen Sinyard. As I informed you, it is important that we maintain a master list of all current passwords, and you are the only employee in the office who has yet to provide one. This is despite two email requests from the Administrative Manager and a directive from me.

Once again, you are expected to forward your current password to the Administrative Manager immediately. Should you fail to do so, the consequence will result in further corrective and/or adverse action, up to and including immediate dismissal.

**APPENDIX — D-8**

Please be reminded of your right to be heard by the  
Senior Staff Attorney.

Sincerely,

/s/Sara L. Gilibert, Esq.

Manager for Recruiting, Training, and  
Professional Development

Defendant's  
Exhibit

8

**APPENDIX 9-D**

**E-MAILS NOTIFYING  
UPPER MANAGEMENT  
CONCERNING PROBLEMS  
WITH COMPUTER**

Evelyn Johnson

03/10/2003 08:56AM

To: Norman Zoller  
/CA11/11/USCOURT@USCOURTS  
JL Edmondson  
/CA11/11/USCOURT@USCOURTS

cc: George A Watson  
/CA11/11/USCOURT@USCOURTS  
Jim Smith  
/CA11/11/USCOURT@USCOURTS  
Naomi Godfrey  
/CA11/11/USCOURT@USCOURTS  
Karen Sinyard  
/CA11/11/USCOURT@USCOURTS  
Sara Gilibert  
/CA11/11/USCOURT@USCOURTS

Subject: printer

Dear Mr. Zoller:

I am trying to work here and trying to print some WP forms for our new employees starting work today. While I have not done any changes on my computer, my printer would not allow me to print and giving me a message indicating "no printer installed" although my printer is still attached and defaulted as my printer. This inappropriate action needs to stop, and I request your immediate action concerning this matter. Thank you very much.

Sincerely,

APPENDIX 9-D

Evelyn Johnson

---

Norman Zoller

03/07/2003 10:41 AM

To: Evelyn Johnson  
/CA11/11/USCOURT@USCOURTS

cc: George A Watson  
/CA11/11/USCOURT@USCOURTS  
Jim Smith  
/CA11/11/USCOURT@USCOURTS  
Naomi Godfrey  
/CA11/11/USCOURT@USCOURTS  
Karen Sinyard  
/CA11/11/USCOURT@USCOURTS  
Sara Gilibert  
/CA11/11/USCOURT@USCOURTS

Subject: Re: PC Workstation

Thank you. The plain wording contained in the Court's notification banner speaks for itself.

---

Evelyn Johnson

03/07/2003 10:24 AM

To: Norman Zoller  
/CA11/11/SCOURT@USCOURTS

cc: George A Watson  
/CA11/11/USCOURT@USCOURTS  
Jim Smith  
/CA11/11/USCOURT@USCOURTS  
JL Edmondson

APPENDIX 9-D

/CA11/11/USCOURT@USCOURTS  
Naomi Godfrey  
/CA11/11/USCOURT@USCOURTS  
Karen Sinyard  
/CA11/11/USCOURT@USCOURTS  
Sara Gilibert  
/CA11/11/USCOURT@USCOURTS  
Virgil Alexander  
/CA11/11/SCOURT@USCOURTS

Subject: Re: PC Workstation

Dear Mr. Zoller:

Thank you for taking the time to respond to my concerns. I would like to clarify, however, the issue you brought up related to my suspicions of computer surveillance statement, and in response to your question on the Court's notification banner.

First, with all due respect to the Court and to you, I do not stake a claim on anything in this office, and I am fully aware that items here, including computers, belong to the U.S. government. I am also fully aware of the Court's notification banner when we turn on our computers. I have no problems nor qualms with the systems monitoring since I never had, and do not intend to, conduct any criminal or illegal activity here or anywhere.

Second, prior to filing my EDR complaint, I have never felt this silent work hostility, and I do have a problem when I know I am being singled-out, whose work is being monitored via computer, by the respondents. It is extremely demoralizing to know that although I was stripped off my duties while I never had any work performance problems for 14 years of my employment here, the computer surveillance of the work I do is in retaliation to the cause of action I took with regard to the numerous adverse employment issues I have with this office.



APPENDIX 9-D

Respectfully,

Evelyn Johnson

---

Norman Zoller

03/06/2003 05:16 PM

To: Evelyn Johnson  
/CA11/11/USCOURTS@USCOURTS

cc: George A Watson  
/CA11/11/USCOURT@USCOURTS  
Jim Smith  
/CA11/11/USCOURT@USCOURTS  
JL Edmondson  
/CA11/11/USCOURT@USCOURTS  
Naomi Godfrey  
/CA11/11/USCOURT@USCOURTS  
Karen Sinyard  
/CA11/11/USCOURT@USCOURTS  
Sara Gilibert  
/CA11/11/USCOURT@USCOURTS  
Virgil Alexander  
/CA11/11/SCOURT@USCOURTS

Subject: Re: PC Workstation

Dear Ms. Johnson:

The situation with respect to operations of the computer at your work station is being investigated.

One particular matter in your memorandum below, however, raises an issue that I wanted to be certain you are aware of and that has to do with your statement relative to your "suspicions of computer surveillance."

Among other items of Government property, the

## APPENDIX 9-D

chairs on which we sit and the desks and computers at which we work and are entrusted, are not ours - they are the property of the United States Federal Judiciary, and we are custodians of that property.

Each day when you and I first turn on the computers at our respective desks, we see a notification banner that the Court has directed be displayed that states, "WARNING: THIS SYSTEM IS FOR USE BY AUTHORIZED USERS ONLY.

Are you representing that you have not been aware of or understood this notification banner? Further, if you do not consent to such monitoring, you should so inform your supervisor and other appropriate steps could be considered (for example, the computer could be removed; network accessibility could be disabled, et. al.). It would seem, however, that such resource issues and accessibility could affect the stated and implied responsibilities of your position and your capacity to discharge those responsibilities.

It would also be inappropriate for anyone to attempt to defeat, subvert, or override the Court's capability to monitor use of these Government supplied machines. If you have questions about these matters, I invite you to consult with Jim Smith or with your supervisor. Best wishes.

---

Evelyn Johnson

03/06/2003 12:34 PM

To: Jim Smith  
/CA11/11/USCOURT@USCOURTS

cc: JL Edmondson  
/CA11/11/USCOURT@USCOURTS  
Norman Zoller  
/CA11/11/USCOURTS@USCOURTS  
Virgil Alexander

APPENDIX 9-D

/CA11/11/USCOURTS@USCOURTS

Naomi Godfrey

/CA11/11/USCOURT@USCOURTS

Karen Sinyard

/CA11/11/USCOURT@USCOURTS

Sara Gilibert

/CA11/11/USCOURT@USCOURTS

George A Watson

/CA11/11/USCOURT@USCOURTS

Subject: Re: PW Workstation

Jim,

Sorry for the call yesterday (February 26). I did not know that you are out of town.

As you mentioned on your Monday's email below to contact you if I have questions concerning my PC, I would like to let you know that there had changes made again to my workstation PC while I was out last week. Your email below implied that I had made changes and requested to refrain from making any changes to my PC. My response to your email clearly stated I had nothing to do with the changes made my PC.

Yesterday, I was certain that my PC was reconfigured back to the way it was, prior to the replacement of my original PC (hard/local/c:drive). Software and applications, including Lotus Notes and My Documents Files are all located on the c:\drive. Although document files are saved on the F:\drive, they are all located and maintained on the local c:\drive.

Sincerely,

Evelyn Johnson

## APPENDIX 9-D

P.S. (March 6, 2003)

I held off sending this email to ensure my computer was NOT just acting up. Beginning this week, and today, George Watson came to my workstation since I asked him to check my computer once again to verify my suspicions of computer surveillance. Although I copied all the PC information from the Netware Security Window on a piece of paper to ascertain my computer settings, George said he did not know why my computer was set that way. I did not believe George since he was the one who assisted the office, and the only automation person who made the changes and reconfigured my current PC.

The applications on my desktop show the following:

My Computer:	There was an additional "Local Disk - D Drive" Share Name - D\$ Comment - Share this folder Hardware - IBM-DTLA-30715 (My local C: Drive is CA11-32016)
My Documents:	Contain four (4) folders: CCWIN 9; Corel User Files; My Pictures; and Old Excel Documents (All folders are useless for me and they contain nothing of my work)

Netware Security Window: Although the Change Password Resource contains two icons (a computer and a tree, both under my name), the Resource (my name(s)) are ALL CONNECTED to ALL RESOURCES, which included 29 computers and 39 other computers/network courtwide.

Excel: When I try to locate a file saved on excel, it takes me to My Documents Application (see above), which gives me the useless folders.

The bottom line is that, the work that I do is being

## APPENDIX 9-D

dumped on the C:\drive then copied on the F:\drive of my PC. Since the Computer Security & Automation Users Guide explicitly prohibits anyone from accessing or viewing any user files or data without the user's authorization and you do not want me to make any changes to my PC, I request that my workstation PC be replaced. I appreciate your assistance and response concerning this matter. Thank you.

----- Forwarded by Evelyn  
Johnson/CA11/11/USCOURTS on 02/27/2003 08:15 AM-----

Evelyn Johnson

02/25/2003 08:41 AM

To: Jim Smith  
/CA11/11/USCOURT@USCOURTS  
cc: Naomi Godfrey  
/CA11/11/USCOURT@USCOURTS  
George A Watson  
/CA11/11/USCOURT@USCOURTS

(bcc: Evelyn Johnson  
/CA11/11/USCOURT@USCOURTS)

Subject: Re: PC Workstation

Thanks for your email, Jim. Yes, I have had numerous problems with my PC workstation and my hard drive has been replaced twice, first by Ken, and second, the one I have now, by Tony. I appreciate all the help.

On Thursday, February 13<sup>th</sup>, George replaced the applications on my PC, as you mentioned below. The only change I made on my PC was my password, which was on the same day, the 13<sup>th</sup>. Beginning the 14<sup>th</sup> through 23<sup>rd</sup> of February, I was out yesterday, the 24<sup>th</sup>, was my first day back to work.

## APPENDIX 9-D

I called George yesterday morning after numerous times I failed to login to my PC. In fact, yesterday around 9:00-9:30 a.m., after George came to my workstation, reset and reconfigure my PC, was the first time I was able to login to my PC since the 13<sup>th</sup> of February. I can assure you, Jim, that if you noticed any changes on the software, both the operating system and applications, I have nothing to do with those changes. Thank you very much for your help and assistance.

Evelyn

---

Jim Smith

02/24/2003 02:04 PM

To: Evelyn Johnson  
/CA11/11/USCOURT@USCOURTS

cc: Naomi Godfrey  
/CA11/11/USCOURT@USCOURTS

Subject: PC Workstation

Evelyn, before you were out on leave last week, George Watson (along with a few others in Automation) have been over to help assist you with some problems you have been experiencing with the PC at your work area. George replaced your PC with a new one and a fresh image of applications. This image was based lined to help track down problems you have reported. I want to reiterate to you, our request to refrain from making any changes to the software, both the operating systems and applications. This will help us in tracking down any workstation problems.

Please contact me if you have any questions on this matter.

APPENDIX 9-D

Jim K. Smith  
Circuit Executive's Office  
Eleventh Circuit Court of Appeals  
56 Forsyth Street, NW, Atlanta, GA 30303-2289  
404/335-6581 - voice, 404/335-6540 - fax

---

Ken Hudson

03/10/2003 10:26 AM

To: Evelyn Johnson  
/CA11/11/USCOURT@USCOURTS

cc:

Subject: Problem number: 0303014 has been assigned  
to: Ken Hudson

You reported a problem or made a request with the  
Help Desk.

Subject: unable to print

You will be contacted on the status of your  
problem/request. Thank you

This is an automated message, please do not reply.

Defendant's Exhibit <u>9</u>
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APPENDIX — D-10

UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT  
STAFF ATTORNEYS' OFFICE

---

MEMORANDUM

DATE: March 12, 2003  
TO: Evelyn Johnson  
FROM: Sara Gilibert  
SUBJECT: Referral to Employee Assistance Program

The purpose of this memorandum is to follow-up on our previous discussions regarding my concern about your conduct and work performance and to recommend a referral to the Employment Assistance Program ("EAP"). This memorandum is not a disciplinary action nor will it become part of your official personnel file, although a copy will be placed in your local personnel file.

Despite repeated efforts to communicate with you (and to counsel you) over the past year, you have continued to display outward resentment toward being supervised and, at times, to blatantly refuse or fail to comply with appropriate instructions from me as your direct supervisor. While, on occasion, you have voiced a willingness to provide support in the common personnel objectives between your position and mine, you continue to carry out your duties only according to how you perceive them and respond to my efforts to align your priorities with those assigned to me by my supervisors with indifference and hostility. My attempts to counsel you with the hopes of opening communication lines and improving specific work and attendance related deficiencies have been met by you with anger and resentment.

## APPENDIX — D-10

Despite three directives from me (including written warning), you have refused or declined to disclose the password to your government-supplied computer, as is the case with every other employee in this office, to the Administrative Manager so that she may access office files stored on the government-issued computer in the office assigned to you. Many files stored on your computer are placed or reside there because of information sent to you by the Administrative Office and by others who send to you official notices, forms, and personnel-related documents. In this respect, privacy is not the issue as noted by the Opening Banner displayed to every employee each time he or she first turns on his or her computer. Your continued refusal to supply your password creates inefficiencies, unneeded duplication, and unsatisfactory work.

You have refused to have your work reviewed by me before you summarily and without my prior authorization, distribute it office-wide, contrary to my express instructions. Some of these unilateral, unapproved distributions by you have resulted in inapplicable or erroneous information being disseminated.

You have failed to communicate with me and with other administrative staff so as to reduce or minimize errors. On at least two occasions, I had instructed you to immediately contact other administrative staff whom you had been refusing to respond to despite their repeated attempts to reach you while you were present in the office.

You have missed a great deal of work and have often failed to submit timely written requests for leave. You have also refused to communicate what it is that you are in the process of working on before taking large amounts of leave so proper arrangements can be made if time sensitive projects are involved.

You have challenged my authority as your supervisor and responded to my work requests with inaction,

## APPENDIX — D-10

indifference, or hostility. Your written remarks to me of December 6, 2002 that I should "stay off [your] back" and other confrontational comments [were] inappropriate, if not insubordinate.

I have received reports that other staff, based on your hostile and belligerent attitude, would prefer not to deal with you. Most recently I have learned of complaints by members of automation regarding your suspicious and angry demeanor towards them to the point they are reluctant to work with you.

We have discussed these issues both formally and informally, but you have not wanted to discuss in detail the reasons for your conduct and performance. If these problems continue, some type of disciplinary action will be taken. I strongly recommend that you take whatever action is necessary to immediately improve. While I may not be fully aware of the reasons for these problems, I am concerned about them and about you. I find some of your most recent behavior and your claims of computer surveillance and conspiracy especially disturbing, and I want to be sure you have the opportunity to use all of the assistance available to you.

Therefore, I direct you to contact the EAP. If any personal problems are affecting your work, the EAP may be of help to you. I have discussed this referral with the EAP Counselor, Marybeth Guagliardo, and she is expecting your call on or before March 14, 2003. Please call her at (404) 730-2384 by 5:00 p.m. on March 14, 2003.

Please note that information about your participation in the EAP will be kept confidential unless disclosure is required by law or safety concerns. You will be granted administrative leave to attend EAP sessions, and I will be told whether you are keeping your appointments. You are expected to fully cooperate and participate in the EAP. The conduct and performance problems I noted above must be

## APPENDIX — D-10

corrected. With an effort on you part and help from the EAP,  
I am hoping you can correct these issues.

c: Norman Zoller  
Naomi Godfrey

Defendant's  
Exhibit  
10

APPENDIX — 11-D

UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT  
STAFF ATTORNEYS' OFFICE  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303-2289

June 20, 2003

VIA U.S. MAIL

Ms. Evelyn Johnson  
6241 S. Skyline Drive  
Douglasville, Georgia 30135  
Dear Ms. Johnson:

I write to inform you that you that you are terminated from the Staff Attorneys' Office. This action has become necessary because of your insubordinate behavior, unsatisfactory work, and inappropriate conduct in the discharge of your responsibilities. I am mindful of your years of service to the court and this office and I take this action only after extremely careful consideration and due reflection. This decision is based on the recommendation of your immediate supervisor, the reports of others, and my personal observations of your conduct and performance.

Although you have been given every consideration, your work performance over the last year has been unacceptable. Since January 21, 2002, when Sara Gilibert began work in the office and became your immediate supervisor, your performance has been unsatisfactory and continues to decline. She has repeatedly advised you to correct your performance deficiencies and tried to enlist your support in performing the personnel duties of the office. Despite Ms. Gilibert's best efforts, your continued failure to follow her directives, your insubordination to her, your failure to satisfactorily to [sic] perform your assigned duties, and your refusal to communicate with her and other administrative staff have resulted in inefficient operations in

## APPENDIX — 11-D

this office. You have been repeatedly counseled, admonished, and warned that such conduct will not be tolerated and will result in disciplinary action if not corrected. Yet, you continue to fail to carry out your assignments and responsibilities or to work with Sara Gilibert in a satisfactory manner.

Because of these continuous unacceptable actions and behavior, you will no longer be accorded the privilege to work for the court and this office. The situation has become one that this office institutionally will not tolerate. Accordingly, and as a result of your unacceptable performance, you are hereby terminated from your position with the Staff Attorneys' Office. This termination will be effective June 27, 2003, at the close of business. Under the authority of the Court's Adverse Action Plan and with the Court's approval, I am placing you immediately in a nonduty status with pay through June 27, 2003. As an alternative, I will accept your resignation effective on or before Friday, June 27, 2003, close of business.

Consistent with APPENDIX II of the Personnel Manual, you have the right to make a written request of the chief judge or his designee within 10 calendar days of the date of your receipt of this letter for a hearing. You also have the right to be represented at the hearing, to confront adverse witnesses, and to present evidence and arguments. If this action is vacated as a result of the hearing before the chief judge or his designee, you will be returned to your status prior to the action as if no action has been taken and all documents will be removed from the record.

I regret having to take this action and wish you every success in your future endeavors.

Sincerely,

/s/ Naomi G. Godfrey  
Senior Staff Attorney

Defendant's  
Exhibit

11



## APPENDIX — D-12

United States Court of Appeals  
Eleventh Circuit  
Staff Attorneys' Office  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303  
Tel: (404) 331-5775

### EMPLOYEE AGREEMENT

I hereby accept the position of Court Secretary for the United States Court of Appeals for the Eleventh Circuit beginning approximately January 17, 1989, at a salary of JSP 6/1, \$18,537. I understand that the position is non-tenured and that I will serve at the pleasure of the Court. I also understand I am subject to a six-month probationary period as set forth in the Personnel Regulations.

I have been provided a copy of the Personnel Manual for the Court, which I have reviewed, and I hereby agree to abide by those regulations.

/s/ Evelyn L. Johnson

Employee

1/4/89

Date

/s/ Karen C. Wilbanks/tm/

Appointing Officer

12/29/88

Date

Received  
Jan 09 1989  
U.S. Court of Appeals  
Staff Attorneys' Office

Defendant's  
Exhibit  
12



APPENDIX — D-13

United States Court of Appeals  
Eleventh Circuit  
Staff Attorneys' Office  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303  
Tel: (404) 331-5775

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Calendars from January 2002, through July 2003, which lists Petitioner's absences from work. Please note that Respondents only included the dates above, since Sara Gilibert was hired, but dates prior to the dates above were not included because Petitioner's absences had never been an issue. The Petitioner had incredibly taken many hours of leave of absence during the time frame cited above. Those days of absences included the filing of the EDR Complaint, Petitioner's mother sudden life threatening sickness, and her eventual death. Petitioner's mother lived in California. The days of absences taken by the Petitioner would not have been taken but for the harassment and hostile work environment, which contributed to Petitioner's sickness attributed by work-related stress.

Defendant's Exhibit <u>13</u>
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## **APPENDIX — E**

### **Table of Authorities**

**Defined (11 pages)**

## APPENDIX — E

04-3452

### TABLE OF AUTHORITIES

#### Case

1. Furnco Construction Corp. v. Waters, 438 U.S. 567, 577 (1978). [Brief, pages 23, 24]
2. Hartman v. MSPB, 77 F.3d 1378, 1380 (5<sup>th</sup> Cir. 1996). [Brief, pages 20, 21]
3. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). [Brief, pages 22, 24]
4. National Railroad Passenger Corp. v. Morgan, 122 S.Ct. 2061 U.S. 4214 (2002). A Title VII plaintiff raising claims of discrete discriminating acts must file his charge within the appropriate 180- or 300-day period, but a charge alleging a hostile work environment will not be time barred if all acts constituting the claim are part of the same unlawful practice and at least one of the acts falls within the filing period—subsequent acts of hostile work environment may still be part of the one claim. [Brief, pages 25, 26]
5. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981). [Brief, page 23]

#### Laws of the Constitution

1. Article III, Section 2 of the Constitution provides in part: The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority; . . . to Controversies to which the United States shall be a party; . . . [Brief, pages 1, 2, 28]
2. Amendment XIV of the U.S. Constitution provides that “No state shall make or enforce any law which shall

## **APPENDIX — E**

abridge the privileges . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws." U.S. Const. Amend. XIV, § 1. [Brief, pages 2, 3, 9, 10, 26, 29]

### **Statutes**

1. **2 U.S.C. § 1302. Congressional Accountability Act of 1995**—Congressional Accountability Act of 1995, states: It was adopted by the Judicial Conference of the United States in order to provide rights and protections to employees of the United States courts which are comparable to those provided to legislative branch employees under the Congressional Act of 1995. 2 U.S.C. § 1302; 2 U.S.C. § 1434. [Brief, pages 12, 18, 29]

2. **2 U.S.C. § 1317—Prohibition of intimidation or reprisal.** It shall be unlawful for an employing office to intimidate, take reprisal against, or otherwise discriminate against, any covered employee because the covered employee has opposed any practice made unlawful by this Chapter. . . [Brief, pages 4, 5, 8, 11, 27]

3. **2 U.S.C. § 1434—Judicial Branch Coverage.** The Judicial Conference may have for legislation to provide to employees of the judicial branch the rights, protections, and procedures under the listed laws, including administrative and judicial relief, that are comparable to those available to employees of the legislative branch. . . (App. F, Tabs 1-6 & 7 (The Nine Laws covered under the Model Employment Dispute Resolution Plan). [Brief, pages i, 2, 5, 9, 11, 18, 29]

4. **Civil Rights Act as Amended in 1991 section 102(b) of Title VII provides:** Except otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, national origin, or age was a motivating factor for any employment practice, even though other factors also motivated the practice. 42 U.S.C. § 2000e-5k.; 42 U.S.C. § 1981a(b). [Brief, pages 2, 3, 10, 11, 22, 27]

## APPENDIX — E

5. **2 U.S.C. § 2302(b)(1). Civil Service Reform Act of 1978**—Prohibited personnel practices, under the Civil Service Reform Act of 1978 provide that, federal agency heads, managers, supervisors, and personnel officials are responsible for preventing prohibited personnel practices, including reprisals, and for complying with and enforcing civil service laws, rules, and regulations. [Brief, page 27]

6. **5 U.S.C. § 706k of Title VII, Civil Rights Act of 1964—Scope of Review.** The reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning of applicability of the terms of an agency action. The reviewing court shall (1) compel agency action unlawfully withheld or unreasonably delayed; and (2) hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitation; (D) without observance of procedure required by law; (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. [Brief, pages i, 12, 20, 28, 30]

7. **5 U.S.C. § 1221(a)**—Individual right of action in certain reprisal cases. Subject to the provisions of subsection (b) of this section and subsection 1214(a)(3), an employee, former employee, or applicant for employment may, with respect to any personnel action taken, . . . against such employee, as a result of a prohibited personnel practice described in section 2302(b)(8), seek corrective action from the Merit Systems Protection Board. [Brief, page 21]

8. **5 U.S.C. § 212.301** [Brief, pages 15, 16]

9. **5 U.S.C. § 2101(a)**—The right to appeal an action to the Board is limited to persons who meet the definition of employee set forth in 5 U.S.C. § 7511 (a)(1). [Brief, page 13]

10. **5 U.S.C. § 2102(a)(2).** [Cite 5CFR212.101 (1-1-05

## APPENDIX — E

Ed.) Part 212 — Competitive Service and Competitive Status, Sec. 212. 101 Definitions, In this chapter it states: (a) Competitive service has the meaning given that term by section 2102 of title 5, United States Code, and includes: (1) All civilian positions in the executive branch of the Federal Government not specifically excepted from the civil service laws by or pursuant to statute, by the President, or by the Office of Personnel Management, and not in the Senior Executive Service; and (2) All positions in the legislative and judicial branches of the Federal Government and in the government of the District of Columbia specifically made subject to the civil service laws by statute. . . . [Brief, page 14, 15]

11. 5 U.S.C. § 2302(b)(1)—The Board has jurisdiction over appeals from agency actions when the appeals are authorized by law, rule, or regulation, which include an appealable action involving discrimination. [Brief, page 27]

12. 5 U.S.C. § 7512(a)(2)—the Board has jurisdiction over appeals from agency actions when the appeals are authorized by law, rule, or regulation, which include removal and an appealable action involving discrimination under 5 U.S.C. § 2302(b)(1) removal under 5 U.S.C. § 4303 or adverse action under 5 U.S.C. § 7512. [Brief, page 27]

13. 5 U.S.C. § 7701(c)(2)—Requires the Board to overturn the agency's action if the Petitioner 1) shows harmful error in the application of the agency's procedures in arriving at its decision; 2) shows that the decision was based on any prohibited practice described in 5 U.S.C. § 2302(b); or 3) shows that the decision was not in accordance with law. 5 C.F.R § 1201.56. (App. F, Tab 8). [Brief, pages 14, 19]

14. 5 U.S.C. § 7703(a)(1)— Any employee or applicant for employment adversely affected or aggrieved by a final order or decision of the Board may obtain judicial review of the order or decision in the U.S. Court of Appeals for the Federal Circuit. [Brief, page 8]



## APPENDIX — E

15. 5 U.S.C. § 7703(a)(2)—The Board shall be named respondent in any proceeding brought pursuant to this subsection, unless the employee or applicant for employment seeks review of a final order or decision on the merits on the underlying personnel action or on a request for attorneys' fees, in which case the agency responsible for taking the personnel action shall be the respondent. [Brief, page 8]

16. 5 U.S.C. §§ 8331, 8347(d)(1)-(2), 8461(e)(1) Federal Employees Retirement System (FERS), Thrift Savings Fund, (TSP), and social security. [Brief, page 9]

17. 28 U.S.C. § 602, Employees. Part III, Chapter 41, § 602 (a)—The Director shall appoint and fix compensation of necessary employees of the Administrative Office in accordance with the Administrative Office of the United States Courts Personnel Act of 1990. (d) All functions of other officers and employees of the Administrative Office and all functions of organizational units of the Administrative Office are vested in the Director. The Director may delegate any of the Director's functions, powers, duties, and authority (except the authority to promulgate rules and regulations) to such officers and employees of the judicial branch of Government as the Director may designate, and subject to such terms and conditions as the Director may consider appropriate; and may authorize the successive redelegation of such functions, powers, duties, and authority as the Director may deem desirable. All official acts performed by such officers and employees shall have the same force and effect as though performed by the Director in person. (App. F, Tab 8). [Brief, page 22]

18. 28 U.S.C. § 604, Part III—Court Officers and Employees, Chapter 41—Administrative Office of United States Courts—Duties of Director generally. (a) The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States, shall: (1) Supervise all administrative matters relating to the offices of clerks and other clerical and



## APPENDIX — E

administrative personnel of the courts. (App. F, Tab 8).  
[Brief, page 22]

19. 28 U.S.C. § 1295(a)(9) [Brief, page 2]

20. 28 U.S.C. § 1651(a)—The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. [Brief, pages 1, 2, 28]

21. 42 U.S.C. § 1981a(a)(1)—Right of recovery in an action brought by a complaining party under 706 or 717 of the Civil Rights Act (42 U.S.C. § 2000e-5, 2000e-16) against a respondent who engaged in unlawful intentional discrimination. Damages in cases of intentional discrimination in employment. In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-5, 2000e-16) against a respondent who engaged in unlawful intentional discrimination . . . the complaining party may recover compensatory or punitive damages as allowed in subsection (b) of this section, in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent. 42 U.S.C. § 2000e et seq. [Brief, pages 3, 11]

22. 42 U.S.C. § 2000e-2—Unlawful Employment Practices. § 2000e-2(a)(1). It shall be unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, terms, and conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; § 2000e-2(b), Employment agency practices. It shall be unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin. § 2000e-2(m). Under the statute, an employer violates Section 2000e-2(m) if unlawful discrimination was a motivating factor for the employment practice, but it can limit its liability to declaratory relief, limited injunctive relief, and

## APPENDIX — E

attorneys' fees and costs if it shows that it would have taken the same actions absent discrimination. [Brief, pages i, 1-3, 11-12, 20, 22, 29, 30]

23. 42 U.S.C. § 2000e-5(g)(1)—If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement . . . back pay (payable by the employer, employment agency, . . . responsible for the unlawful employment practice), or any equitable relief as the court deems appropriate. [Brief, pages 12, 30]

24. 42 U.S.C. § 2000e-5(a), (b), (f)(1)(A), (B)(2)(3). Full relief under Title VII. When an appropriate authority has determined that an employee was affected by an unjustified or unwarranted personnel action[s], the employee shall be entitled to back pay under section 5596 of Title 5, U.S. Code, and this subpart only if the appropriate authority finds that the unjustified or unwarranted personnel action[s] resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee. 5 C.F.R § 550.804(a); 550.805. [Brief, pages 12, 30]

### Federal Regulations

1. 5 C.F.R § 212.101—Title 5, Administrative Personnel, Chapter I, Office of Personnel Management, Part 1, Coverage and Definitions. Section 1.2 Extent of the Competitive Service.

(a) Competitive service has the meaning given that term by section 2102 of title 5, United States Code, and includes: all civilian positions in the executive branch of the Government unless specifically excepted therefrom by or pursuant to statute or by the Office of Personnel Management (hereafter referred to in this subchapter as OPM) under Sec. 6.1 of this subchapter; and (b) all positions in the legislative and judicial branches of the Federal Government and in the Government of the District of

## APPENDIX — E

Columbia which are specifically made subject to the civil service laws by statute. OPM is authorized and directed to determine finally whether a position is in the competitive service. 5 U.S.C. § 2102(a)(2). (App. F, Tab 8). [Brief, pages 15, 19]

2. 5 C.F.R § 1.3; § 315.501—Title 5, Administrative Personnel, Chapter I, Office of Personnel Management, Part 1, Coverage and Definitions. As used in the rules in this subchapter: (a) Competitive service shall have the same meaning as the words "classified service," or "classified (competitive) service," or "classified civil service," as defined in existing statutes and executive orders. (b) Competitive position shall mean a position in the competitive service. (C) competitive status shall mean basic eligibility to be noncompetitively selected to fill a vacancy in a competitive position. A competitive status shall be acquired by career-conditional or career appointment through open competitive examination upon satisfactory completion of a probationary period, or may be granted by statute, executive order, or the Civil Service Rules without competitive examination. A person with competitive status may be promoted, transferred, reassigned, reinstated, or demoted without taking an open competitive examination, subject to the conditions prescribed by the Civil Service Rules and Regulations. (d) An employee shall be considered as being in the competitive service when he has a competitive status and occupies a competitive position unless he is serving under a temporary appointment: Provided, that an employee who is in the competitive service at the time his position is first listed under Schedule A, B, or C shall be considered as continuing in the competitive service as long as he continues to occupy such position. (e) Tenure shall mean the period of time an employee may reasonably expect to serve under his current appointment. Tenure shall be granted and governed by the type of appointment under which an employee is currently serving without regard to whether he has a competitive status or whether his appointment is to a competitive position or excepted position. (App. E, F, Tab 8). [Brief, pages 15, 16]

## APPENDIX — E

3. 5 C.F.R § 1201.36(2)—Consolidating and joining appeals. Joinder occurs when one person has filed two or more appeals and they are united for consideration. [Brief, page 26]

4. 5 C.F.R 212.101—Title 5, Administrative Personnel, Chapter I, Office of Personnel Management, Part 212. Competitive service and competitive status. 212.101 Definitions. (a) Competitive service has the meaning given that term by section 2102 of Title 5, United States Code, and includes: (1) All civilian positions in the executive branch of the Federal Government not specifically excepted from the civil service laws by or pursuant to statute, by the President, or by the Office of Personnel Management, and not in the Senior Executive Service; and (2) All positions in the legislative and judicial branches of the Federal Government and in the government of the District of Columbia specifically made subject to the civil service laws by statute. (App. F, Tab 8). [Brief, pages 15, 19]

5 CFR § 315.502. (a) General rule. Except as provided in paragraph (b) of this section, *a career employee who transfers remains a career employee and a career-conditional employee who transfers remains a career-conditional employee.* (b) Exceptions. (1) A career-conditional employee who transfers to a position required by law to be filled on a permanent basis becomes a career employee. (2) . . . . [Brief, pages 15, 16]

6. Fed.Cir.R. 15(c)(2), [Brief, page 7]

7. AOUSC Model EDR Plan—this Plan shall be known as the Federal Judiciary Model Employment Dispute Resolution Plan (Model EDR Plan). It was adopted by the Judicial Conference of the United States in order to provide rights and protections to employees of the United States courts which are comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995. (App. F, Tabs 1 & 4 covered Under the Model Employment Dispute Resolution Plan). This Plan applies to all Article III judges and other judicial officers of the United States courts of appeals . . . as well as to all employees of



## APPENDIX — E

the courts of appeals (emphasis) . . . including judges' chambers staffs, court unit heads and their staffs (emphasis). . . . [Brief, pages 18, 19]

8. Section 10 of the Eleventh Circuit Court of Appeals Employment Dispute Resolution Plan—§ 1 Preamble. This is the Employment Dispute Resolution Plan ("EDR Plan") of the Eleventh Circuit Court of Appeals. It is based on the Federal Judiciary Model Employment Dispute Resolution Plan adopted by the Judicial Conference of the United States and on the Model Employment Dispute Resolution Plan of the Eleventh Circuit provides rights, protections and procedures for employees of the Eleventh Circuit Court of Appeals comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995. (App. F, Tab 6 of Section 10 of the Eleventh Circuit Court of Appeals Employment Dispute Resolution Plan). [Brief, page 18]

### DIRECT QUOTES FROM THE BRIEF

"[b]ecause Ms. Johnson's petition challenges a decision concerning only the board's jurisdiction to hear the appeal, and not on the merits, the board not the agency, is the proper respondent. The respondent and the board agree that the MSPB's dismissal of Ms. Johnson's appeal for lack of jurisdiction is not a final order or decision on the merits of the underlying personnel action (emphasis) see 5 U.S.C. § 7703(a)(2)."

Amendment XIV of the U.S. Const. (E at 1, at 6; compare A-7, A 11-12). [Brief, page 10]

## APPENDIX — E

[Petitioner's Note, see Brief at 26 (B) 2003 Adverse Personnel Action]

Petitioner filed initial complaint on March 12, 2002, and employing office's final decision was entered April 24, 2003. Note that Petitioner filed an Amendment to Petition for Review on March 31, 2003 (R8 Tab 7), compare with (R4), Defendant's Exhibits at October 29, 2003 hearing & Appendix C. At the supposedly "Adverse Personnel Action Hearing" of October 29, 2003, Respondent's documents were same documents Petitioner filed for the 2002 EDR complaint. Note that the facts and issues involved on the 2002 EDR complaint and the 2003 EDR complaint were inseparable, but the employing office and the Northern District Court of Georgia refused to combine both complaints at issue on 2003 EDR complaint, which were the involuntary termination without cause, and the retaliatory termination as a result of Petitioner's filing of the 2002 EDR complaint. 5 C.F.R. §1201.36(2). (App. E-15). [Brief, page 26]

## APPENDIX — F

[1 — 11]

	NO. OF PAGES
F — 1	27
F — 2	5
F — 3	7
F — 4	1
F — 5	4
F — 6	6
F — 7	7
F — 8	9
F — 9	1
F — 10	5
F — 11	1



## APPENDIX — F-1

### SAO EMPLOYMENT AND PAY HISTORY

**NAME:** Sara L. Gilibert  
**DOB:** 08/20/1970  
**SCD:** 01/22/2002  
**RACE:** White/Female

### QUALIFICATIONS & EXPERIENCE:

Education: JD, Mercer University, 1997; MA, Univ of AL, 1993; BA, Univ of AL 1992

Experience: 1/22/2002 - Present, Mgr for Recruiting, Professional Dev & Training, SAO, USCA; 8/00-12/01, Legal Recruiter, Hughes & Sloan, Inc.; 9/97-8/00, Litigation Associate & Summer Associate, Alston & Bird, LLP; 1995, summer law clerk for a county magistrate court judge.

### Nature of

**Action:** EOD (Enter on Duty)

### Effective

**Date:** 01/22/2002

### Title:

Manager for Recruiting,  
Professional Development  
& Training

### Grade:

CPS/CL 30/20

### Salary:

\$73,833

# APPENDIX — F-1

**NAME:** Carol Ann Griffith  
**DOB:** 08/09/1953  
**SCD:** 05/04/1998  
**RACE:** White/Female

Nature of Action	Eff Date	Title	Grade	Salary
EOD	01/29/01	Sec.	CL 24	\$32, 714
Spec. Svc Award	08/27/01	Same	Same	\$2,000
Pay Adj.	01/14/02	Same	Same	\$35,370
Prom/ Reclass	02/11/02	Asst. to Admin Case Mgr.	CL25	\$37,807

# APPENDIX — F-1

**NAME:** James Hale II  
**DOB:** 10/11/1964  
**SCD:** 07/14/1997  
**RACE:** Black/Male

Nature of Action	Eff Date	Title	Grade	Salary
<b>EOD</b>	<b>07/14/97</b>	<b>Recep</b>	<b>CL 23/01</b>	<b>\$20,942</b>
Pay Adj.	01/05/98	Same	Same	\$21,438
WGI	01/19/98	Same	CL 23/01	\$22,674
Spec Svc Award	06/22/98	Same	Same	\$600
WGI	07/20/98	Same	CL 23/25	\$23,910
<b>Prom (1)</b>	<b>12/07/98</b>	<b>Court</b>	<b>CL 24/25</b>	<b>\$29,086</b>
		Sec.		
Pay Adj.	01/04/99	Same	Same	\$30,126
WGI	01/04/00	Same	CL 24/29	\$32,616
<b>Prom/ Reclass (2)</b>	<b>07/31/00</b>	<b>Admin</b>	<b>CL 25/25</b>	<b>\$34,860</b>
		<b>Case</b>		
		<b>Mgr.</b>		
Pay Adj.	01/01/01	Same	Same	\$36,134
WGI	08/21/01	Same	CL 25/29	\$37,338
Spec Svc Award	08/27/01	Same	Same	\$3,000

## APPENDIX — F-1

Pay Adj. 01/14/02 Same Same \$39,066

Prom/ 02/11/02 Same CL 26/25 \$41,634  
Reclass (3)

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**NAME:** Catherine D. Hester  
**DOB:** 04/14/1955  
**SCD:** 04/06/1999  
**RACE:** White/Female

Nature of Action	Eff Date	Title	Grade	Salary
EOD	10/09/00	Recep	CL 23	\$29,449
Pay Adj.	01/01/01	Same	Same	\$30,526
WGI	04/09/01	Same	CL 23	\$31,512
Pay Adj.	01/14/02	Same	Same	\$32,970
Prom	02/11/02	Same	CL 24	\$35,085

# APPENDIX — F-1

**NAME:** Belinda Hunte  
**DOB:** 03/12/1959  
**SCD:** 04/06/1998  
**RACE:** Black/Female

Nature of Action	Eff Date	Title	Grade	Salary
EOD	01/04/99	Sec.	CL 24	\$29,086
Pay Adj.	01/04/99	Same	Same	\$30,126
WGI	01/03/00	Same	CL 24	\$32,616
WGI	04/10/00	Same	CL 24	\$33,671
Pay Adj.	01/01/01	Same	Same	\$34,386
WGI	04/09/01	Same	CL 24	\$35,987
Pay Adj.	01/14/01	Same	Same	\$36,653
Prom/ Reclass	02/11/02	Sec/ Auto Supp Spec	CL 25	\$40,011

## APPENDIX — F-1

**NAME:** Evelyn L. Johnson  
**DOB:** 10/23/1951  
**SCD:** 07/08/1982  
**RACE:** Asian/Female

**QUALIFICATIONS & EXPERIENCE:** 20+ years federal government employment, 14 ½ years with the SAO. Federal administrative work in areas of personnel, federal employment benefits, payroll, legal recruiting, secretarial, law library maintenance, proofreading, citechecking, general administrative duties, residential real estate sales, and personal financial planning analysis. Bachelors degree in business and management; active licenses in life & health insurance, mortgage broker, securities (series 6 and 63), and variable annuity. Inactive license in real estate.

Nature of Action	Eff Date	Title	Grade	Salary
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**Transfer w/o a break in service—from a competitive service instrumentality (Veterans Administration Regional Office, Personnel)**

<b>EOD</b>	<b>01/17/89</b>	<b>Sec.</b>	<b>JSP 6/1</b>	<b>\$19,297</b>
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<b>Pay Adj.</b>	<b>01/01/90</b>	<b>Same</b>	<b>Same</b>	<b>\$19,992</b>
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<b>WGI</b>	<b>01/29/90</b>	<b>Same</b>	<b>JSP 6/2</b>	<b>\$20,598</b>
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<b>Prom (1) *</b>	<b>01/29/90</b>	<b>Same</b>	<b>JSP 7</b>	<b>\$ 22,214</b>
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# APPENDIX — F-1

Pay Adj.	01/14/91	Same	Same	\$23,126
WGI	01/28/91	Same	JSP 7/3	\$23,827
Pay Adj.	01/13/92	Same	Same	\$23,826
WGI	01/27/92	Same	JSP 7/4	\$25,556
Pay Adj.	03/08/93	Same	Same	\$26,502
WGI	01/24/94	Same	JSP 7/5	\$27,259
Pay Adj.	01/09/95	Same	Same	\$27,803
Prom (2)	07/24/95 *	Sec. to Sr. Staff Atty.	JSP 8/4	\$29,542
Pay Adj.	01/08/96	Same	Same	\$30,274
Courtwide	02/19/96	Same	CL 25/25	\$30,398
conversion from JSP to CPS/CL *				
WGI *	07/22/96	Same	CL 25/29	\$31,412
WGI (out of cycle) *	08/19/96	Same	CL 25/33	\$32,425
Spec Svc Award	08/19/96	Same	Same	\$600
Pay Adj.	01/06/97	Same	Same	\$33,336
WGI	08/18/97	Same	CL 25/37	\$34,380



# APPENDIX — F-1

Pay Adj.	01/05/98	Same	Same	\$35,351
Spec Svc Award	06/22/98	Same	Same	\$600
WGI	08/17/98	Same	CL 25/39	\$35,888
Pay Adj.	01/04/99	Same	Same	\$37,158
WGI	08/16/99	Same	CL 25/41	\$37,713
Spec Svc Award	08/16/99	Same	Same	\$800
Pay Adj.	01/03/00	Same	Same	\$39,511
WGI	08/14/00	Same	CL 25/43	\$40,093
Pay Adj.	01/01/01	Same	Same	\$41,552
WGI	08/13/01	Same	CL 25/45	\$42,154
Spec Svc Award	08/13/01	Same	Same	\$420
Prom (3) *	09/10/01	HR Coord.	CL26/40	\$44,780
Pay Adj,	01/14/02	Same	Same	\$46,852

# APPENDIX — F-1

**NAME:** Karen B. Sinyard  
**DOB:** 10/09/1955  
**SCD:** 02/13/1984  
**RACE:** White/Female

## QUALIFICATIONS & EXPERIENCE:

Education: Georgia Southwestern College—one year secretarial training program; West Georgia College—certificate in training program.  
 Experience: 1986—Present, SAO employee; 1984-1986, worked as deputy clerk, Clerk's Office, USCA; 1976-1983, five years and two months general secretarial experience.

Nature of Action	Eff Date	Title	Grade	Salary
EOD	10/20/86	Sec.	JSP 6/8	\$19,785
Pay Adj.	01/05/87	Same	Same	\$20,378
Pay Adj.	01/04/88	Same	Same	\$20,785
Pay Adj.	03/28/88	Same	Same	\$22,471
Pay Adj.	01/02/89	Same	Same	\$23,392
Prom (1) *	01/02/89	Same	JSP 7/7	\$24,683
Pay Adj.	01/01/90	Same	Same	\$25,579
QSI	01/29/90	Same	JSP 7/8	\$26,252
Pay Adj.	01/14/91	Same	Same	\$27,332

# APPENDIX — F-1

Prom (2) *	08/26/91	Auto Supp. Spec.	JSP 8/8	\$29,492
Pay Adj.	01/13/92	Same	Same	\$30,734
Prom (3) *	08/24/92	Same	JSP 9/8	\$33,049
Pay Adj.	03/08/93	Same	Same	\$34,271
Pay Adj.	01/10/94	Same	Same	\$35,594
Spec Svc Award	09/15/94	Same	Same	\$500
Pay Adj.	01/10/95	Same	Same	\$36,589
WGI	08/21/95	Same	JSP 9/9	\$37,578
Spec Svc Award	09/04/95	Same	Same	\$800
Pay Adj.	01/08/96	Same	Same	\$38,506
Courtwide conversion from JSP to CPS/CL	02/19/96	Same	CL 25/58	\$38,760
Spec Svc Award	08/19/96	Same	Same	\$1,100
WGI	08/19/96	Same	CL 25/59	\$39,013
Pay Adj.	01/06/97	Same	Same	\$40,121
Spec Svc	08/18/97	Same	Same	\$1,500

# APPENDIX — F-1

## Award

WGI	08/18/97	Same	CL 25/60	\$40,382
Prom (4) *	08/18/97	Auto Spec	CL27/41	\$42,862
Pay Adj.	01/05/98	Same	Same	\$44,053
Spec Svc Award	06/22/98	Same	Same	\$1,000
WGI	08/17/98	Same	CL 27/43	\$44,701
Pay Adj.	01/04/99	Same	Same	\$46,310
Prom/ Reclass (5) *	01/17/00	Office Mgr.	CL 28/29	\$52,240
Pay Adj.	01/01/01	Same	Same	\$54,146
WGI	01/14/01	Same	CL 28/33	\$55,894
Spec Svc Award	03/12/01	Same	Same	\$420
Spec Svc Award	08/27/01	Same	Same	\$3,000
Pay Adj.	01/14/02	Same	Same	\$58,486
WGI	01/14/02	Same	CL 28/37	\$60,316
Prom/ Reclass (6) *	04/08/02	Admin Mgr.	CL 29/25	\$65,195

# APPENDIX — F-1

**NAME:** Kathy S. Whitmire  
**DOB:** 01/29/1960  
**SCD:** 11/02/1998  
**RACE:** White/Female

Nature of Action	Eff Date	Title	Grade	Salary
EOD	12/26/00	Sec.	CL 24/29	32,616
Pay Adj.	01/01/01	Same	Same	\$33,805
WGI	05/07/01	Same	CL 24/33	\$34,896
Temp Pay Adj.	06/04/01	Same	CL 24/37	\$35,987
Spec Svc Award	08/27/01	Same	Same	\$2,000
Pay Adj.	01/14/02	Same	Same	\$36,512
Prom/ Reclass (1) *	02/11/02	Fin. Procure Spec.	CL 25/28	\$38,751

# APPENDIX — F-1

**NAME:** Jacqueline K. Williams  
**DOB:** 07/22/1954  
**SCD:** 09/02/1986  
**RACE:** Black/Female

Nature of Action	Eff Date	Title	Grade	Salary
<b>EOD</b>	<b>01/15/99</b>	<b>Recep.</b>	<b>CL 23/29</b>	<b>\$29,325</b>
<b>Pay Adj.</b>	<b>01/04/99</b>	<b>Same</b>	<b>Same</b>	<b>\$30,383</b>
<b>Prom (1) *</b>	<b>09/27/99</b>	<b>Gen</b>	<b>CL 24/36</b>	<b>\$32,895</b>
			<b>Clerk</b>	
<b>Pay Adj.</b>	<b>01/03/00</b>	<b>Same</b>	<b>Same</b>	<b>\$34,462</b>
<b>WGI</b>	<b>09/25/00</b>	<b>Same</b>	<b>CL 24/40</b>	<b>\$35,517</b>
<b>Pay Adj.</b>	<b>01/01/01</b>	<b>Same</b>	<b>Same</b>	<b>\$36,805</b>
<b>Spec Svc</b>	<b>08/13/01</b>	<b>Same</b>	<b>Same</b>	<b>\$420</b>
<b>WGI</b>	<b>09/24/01</b>	<b>Same</b>	<b>CL 24/42</b>	<b>\$37,351</b>
<b>Pay Adj.</b>	<b>01/14/02</b>	<b>Same</b>	<b>Same</b>	<b>\$39,080</b>
<b>Prom/Reclass (2) *</b>	<b>02/11/02</b>	<b>Recruit/CL25/37</b>	<b>\$41,586</b>	
		<b>HR Asst.</b>		

## Legend:

**EOD** — Enter on duty date  
**Pay Adjustment** — Cost of living increase  
**SCD** — Service computation Date  
**WGI** — Within grade increase

# APPENDIX — F-1

## OVERVIEW—SAO SUPPORT STAFF PAY HISTORY

### Employee Edwards Gilibert Griffith

<b>EOD</b>	<b>9/14/01</b>	<b>1/22/02</b>	<b>1/29/01</b>
<b>Grade/ Hired</b>	<b>CL 23/01</b>	<b>CL 30/20</b>	<b>24/25</b>
<b>Title</b>	<b>B/up Recep</b>	<b>Mgr Recruit</b>	<b>Asst Admin Case Mgr</b>
<b>No. of Prom</b>	<b>New Emp</b>	<b>New Emp</b>	<b>(1)</b>
<b>Pres Grade</b>	<b>CL 23/ 07</b>	<b>CL 30/25</b>	<b>CL 25/25</b>
<b>Race/ Sex</b>	<b>W/ F</b>	<b>W/ F</b>	<b>W/ F</b>
<b>Age</b>	<b>22</b>	<b>32</b>	<b>49</b>
<b>Salary</b>	<b>\$26,265</b>	<b>\$77,043</b>	<b>\$37,807</b>

### Employee Hale Hester Hudson

<b>EOD</b>	<b>7/14/97</b>	<b>10/9/00</b>	<b>9/10/00</b>
<b>Grade/ Hired</b>	<b>CL 23/01</b>	<b>CL 23/29</b>	<b>CL 23/01</b>
<b>Title</b>	<b>Admin Case Mgr</b>	<b>Recep</b>	<b>Mail/Clerk</b>
<b>No. of Prom</b>	<b>(3)</b>	<b>(1)</b>	<b>Part/Time</b>



# APPENDIX — F-1

<u>Employee</u>	<u>Hale</u>	<u>Hester</u>	<u>Hudson</u>
Pres	CL	CL	CL
Grade	26/25	24/28	22/25
Race/	B/	W/	B/
Sex	M	F	M
Age	37	49	22
Salary	\$41,634	\$37,807	\$25,769

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<u>Employee</u>	<u>Hunte</u>	<u>Johnson</u>	<u>Sinyard</u>
EOD	1/04/99	1/17/89	10/20/86
Grade/	CL	JSP	JSP
Hired	24/25	6/1	6/8
Title	Sec/ Auto Supp	HR/ Coord	Adm/ Mgr
No. of Prom	(1)	(3)	(6)
Pres	CL	CL	CL
Grade	25/32	26/40	29/25
Race/	B/	A/	W/
Sex	F	F	F
Age	43	50	46
Salary	\$40,011	\$46,852	\$65,195

## APPENDIX — F-1

### Employee Whitmire Williams

EOD	12/26/00	1/15/99
Grade/ Hired	CL 24/29	CL 23/39
Title	Fin/ Procure	Recruit/ HR Asst
No. of Prom	(1)	(2)
Pres Grade	CL 25/28	CL 25/37
Race/ Sex	W/ F	B/ F
Age	40	48
Salary	\$38,751	\$41,586

---

### TRUE COPY OF IMPORTANT E-MAILS

Author: Naomi Godfrey at 11CE-ATLANTA

Date: 4/1/1999 12:26 PM

Priority: Normal

TO: Mail List - #11CA STATTY-SEC, Bill Hagan

Subject: Distribution of tasks

I do not plan to replace Toni anytime in the near future. Instead, I would like to divide the tasks she performed amoung [sic] you. Therefore, we need to meet and discuss who/how this will be done. Please let me know if you CANNOT meet April 12, 1999, at 10 A.M.

APPENDIX — F-1

---

Author: Toni Mason at 11CA-ATLANTA

Date: 8/15/96 9:27 AM

Priority: Normal

TO: Evelyn Johnson

Subject: Re:

-----Message Contents-----

You will be receiving a grade increase  
from CL 25/29

to CL 26/25 soon. The paperwork has  
not yet been

completed. I will let you know when it  
is. What you

received on your last paycheck was a 4-  
step increase

(which is equivalent to a 1 step increase  
under JSP).

TAM

\_\_\_\_\_  
Reply Separator\_\_\_\_\_

Subject:

Author: Evelyn Johnson at 11CA-ATLANTA

Date: 8/12/96 1:23 PM

Toni,

I have received my earnings  
statement, and I

noticed that my grade changed from  
CL25/25 to CL

25/29. I assumed that was the WGI  
increase (due  
7/22/96).

Also, isn't it before the change to the  
new

system, I am supposed to get promoted

APPENDIX — F-1

from JSP -8  
to JSP -9 this year? Please let me know  
when this  
is supposed to take place with the new  
system and  
how this works. Thanks a bunch.

EJ

---

Author: Naomi Godfrey at 11CA-ATLANTA  
Date: 8/13/96 1:16 PM  
Priority: Normal  
To: Toni Mason  
Subject: Re:

-----Message Contents-----  
Since she asked you, you can tell her  
that she will get  
the grade increase soon. I think this  
works out better  
because she will go to a higher step  
within the grade  
or classification level than she would  
have had we  
sent in the paper work earlier. Let's  
send in the paper  
work on this tomorrow.

\_\_\_\_Reply Separator\_\_\_\_\_  
Subject:  
Author: Toni Mason at 11CA-Atlanta  
Date: 8/12/96 3:09 PM

Naomi -

Please see Evelyn's e-mail below. Do you  
want to  
respond? Or do you want me to?

APPENDIX — F-1

Thanks,

TAM

\_\_\_\_\_ Forward Header \_\_\_\_\_

Subject:

Author: Evelyn Johnson at 11CA-ATLANTA

Date: 8/12/96 1:23 PM

Toni,

I have received my earnings statement, and I

noticed that my grade changed from CL25/25 to CL

25/29. I assumed that was the WGI increase (due 7/22/96).

Also, isn't it before the change to the new

system, I am supposed to get promoted from JSP -8

to JSP -9 this year? Please let me know when this

is supposed to take place with the new system and

how this works. Thanks a bunch.

EJ

---

**APPENDIX F-1**

**UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT  
STAFF ATTORNEYS' OFFICE  
56 Forsyth Street, N. W., Room 549  
Atlanta, GA 30303  
404-331-5775**

Naomi G. Godfrey  
Senior Staff Attorney

July 25, 1995

Human Resources Division  
Administrative Office of the  
United States Courts  
Washington, D. C. 20544

ATTENTION: Ann Alston

RE: Promotions of Evelyn Johnson, JSP 7/5,  
SSN 231- 11-0983, Joyce Jenkins, JSP  
7/10, SSN 252-76-1148 And Sandra L.  
Seabury, JSP 7/10, SSN 425-94-5524

Dear Ms. Alston:

I request the reclassification and promotion of: Evelyn Johnson from Court Secretary to Secretary to the Senior Staff Attorney; Joyce Jenkins from Court Secretary to Generalist/Secretary; and Sandra L. Seabury from Court Secretary to Procurement & Property Technician/Secretary. Ms. Johnson will be reassigned from position number P8900255 into position number P8618299. The position numbers currently occupied by Ms. Jenkins and Ms. Seabury, P8618298 and P8618297 respectively, remain the same.

## APPENDIX — F-1

Ms. Johnson, Ms. Jenkins and Ms Seabury have all been a Grade JSP 7 for over five years; thus, all are eligible for promotion to grade 8. They have been hard-working and conscientious employees since they began working for the Staff Attorneys' Office (Ms. Johnson began in January 1989, Ms. Jenkins began in May 1989, and Ms. Seabury began in July 1990) and deserve promotions to JSP 8. I request Ms. Johnson, Ms. Jenkins, and Ms. Seabury be promoted to JSP 8 effective August 7, 1995. This request is submitted with the approval of the Court. I have enclosed copies of the position descriptions which outline the duties of these positions and a current organizational chart.

If you have any questions, please call me at (404) 331-5775.

Sincerely,

/s/ Naomi G. Godfrey  
Naomi G. Godfrey  
Senior Staff Attorney

Enclosures



# APPENDIX — F-1

<b>(AO-193) — REQUEST FOR PERSONNEL ACTION</b>	
<b>PART A</b>	
1. Requesting Office: Eleventh Circuit, U.S. Court of Appeals (Staff Attorneys' Office)	
2. Type of Action Requested and TOA Code: Promotion— 702A	3. NTE Date: N/A (if applicable)
2a. Effective Date: 8/07/95	4. Tour of Duty: FT
5. Employee Name: (Last, First, MI) Johnson, Evelyn L.	6. Social Security : 231-11-0983
<b>FROM</b>	<b>TO</b>
7. Position Title: Court Secretary Grade/Step: JSP (7/5) Position Number: P8900255 Special Pay Rate: Y: N: Sch: TABLE 14	8. Position Title: Secretary (Sr. Staff Atty) Grade/Step: JSP (8/4) Position Number: P8618299 Special Pay Rate: Y: N: Sch: TABLE 14
9. Name and Mailing Address of Current Org. (Duty Station)	10. Name and Mailing Address of New Org. (Duty Station)

## APPENDIX — F-1

11. Remarks: Ms. Johnson's duties have substantially changed in recent years due to the tremendous increase in our office's workload and increased staff.. Her duties now include those generally designated for the Secretary to the Senior Staff Attorney. This recommendation has the approval of the Court.

See instructions for any required remarks.  
See attached checklist for appointments/separations.

12. For Additional Information Call:  
Telephone:  
Name: Toni A. Mason, Budget Analyst  
(404) 331-5775

13. Appointing Officer Name: Title:  
Sr. Staff Attorney  
Signature: /s/ Naomi G. Godfrey Date:  
July 24, 1995

This request is submitted with the approval  
of the Court

### PART B - AO USE ONLY

1. Requesting Office:

Action:  
Grade: Step:

Position Number:  
Date:

Staffed By:  
Date:

## APPENDIX — F-1

### POSITION DESCRIPTION

January 2, 1989

#### SECRETARY (SENIOR STAFF ATTORNEY) DEFINITION

The Secretary (Senior Staff Attorney) performs secretarial and clerical duties under the supervision of the senior staff attorney, providing support to his or her immediate office.

#### Occupational Information

Secretaries perform a variety of duties which require them to speak or act for the supervisor. Therefore, the secretary should know his or her supervisor's basic policies, viewpoints, and attitudes so that he or she may act accordingly and inform others.

A Secretary (Senior Staff Attorney) performs duties such as the following:

1. Receives, screens, and refers telephone and in-person callers. Answers general inquiries from knowledge of supervisor's activities and program operations.
2. Takes and transcribes dictation from supervisor or dictating equipment. Checks correct spelling of unfamiliar words.
3. Types in final form the supervisor's material, including correspondence, memoranda, reports, legal documents, statistics and other items. Edits material to eliminate wordy phrases, redundancies, incorrect

## APPENDIX — F-1

grammar, and poor word choice. Assembles and attaches supplemental material, as required. Checks citations quoted in items typed to assure their accuracy. Prepares appropriate copies.

4. Keeps appointment calendar and makes and tracks appointments for professional staff as required.

5. Responsible for the organization of the files of the office.

6. Arranges business travel itineraries for supervisor and staff, including plane tickets, auto rental and hotel lodging.

7. Acts as confidential assistant regarding personnel matters.

### Organizational Relationships

The Secretary reports directly to the Senior Staff Attorney.

### Qualifications

To qualify for a position of Secretary (Senior Staff Attorney) a person must be a high school graduate or the equivalent and must have the following experience:

JSP Grade Level	Years c. General Experience	Years of Specialized Experience	Total Years of Experience
4	1	0	1
5	2	0	2
6	2	1	3
7	2	2	4
8	2	3	5
9	2	4	6

## APPENDIX — F-1

Note: One year of the required experience (specialized, if that is required at the grade level) must have been at, or equivalent to, the next lower grade in the Federal service.

### General Experience

Responsible clerical or secretarial experience which provided a good knowledge of office clerical practices such as filing, telephone usage, typing, record keeping, sorting and distributing mail. Sales, stockroom, office machine operation, and similar types of experience are not creditable, unless the experience involved, as a regular and routine part of the job, the use of clerical practices outlined above. At the JSP-5 level, one year of the general experience should have been obtained in a position (or positions) which provided a good knowledge of a law-related office.

### Specialized Experience

Progressively responsible secretarial experience which involved responsibility as the principal office assistant to a supervisor who is dealing with law-related matters.

### Educational Substitutions

Education above the high school level in accredited institutions may be substituted for the general experience on the basis of one academic year (30 semester or 45 quarter hours) equals one year of experience. Preferably, such studies should have included courses in law, government, public or business administration, or related fields.

## APPENDIX — F-1

Education in a legal or paralegal curriculum may be substituted for a maximum of two years of specialized experience on the basis of one full academic year (30 semester or 45 quarter hours) equals one year of experience. Less than one full year of study will be credited on a pro-rata basis.

## **APPENDIX — F-2 —**

### **EXCERPTS from Guide to Judiciary Policies and Procedures in Relevant Part:**

#### **AOUSC Model EDR Plan**

#### **MODEL EMPLOYMENT RESOLUTION PLAN**

#### **Chapter I - General Provisions**

##### **1. Preamble**

This Plan shall be known as the Federal Judiciary Model Employment Dispute Resolution Plan ("Model EDR Plan"). It was adopted by the Judicial Conference of the United States in order to provide rights and protections to employees of the United States courts which are comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995.

The plan supersedes Appendix I ("Discrimination and Complaint Procedures") of the current Judiciary Model Equal Employment Opportunity Plan ("Model EEO Plan"), except for Section VI of Appendix I ("Annual Report") imposing requirements on the courts. Claims arising under Chapters II through VII of this Plan, or under Sections I through VII of the Judiciary's Model EEO Plan, shall be treated in accordance with the procedures set forth in Chapter VIII of this Plan. The duties of the court's EEO Coordinator will be assumed by the Employment Dispute Resolution Coordinator (established in Section 3 of Chapter VIII of this Plan), except that the dispute resolution duties assigned to the EEO Coordinator under the Model EEO Plan will be replaced by the dispute resolution procedures set forth in Chapter VIII of this Plan.

This Plan is to be implemented in the same manner as the Model EEO Plan. Upon approval of this Plan by the Judicial Conference, each court shall adopt and implement a plan based thereon. Any modification of this Plan by a court must first be approved in its circuit by the judicial council. A copy



## APPENDIX — F-2

of each plan and any subsequent modifications shall be filed with the Administrative Office. Each court shall annually submit a report on the implementation of its plan to the Administrative Office for inclusion in the Director's Annual Report to the Judicial Conference.

....

The Model EDR Plan is not intended to duplicate the protections provided for the resolution of complaints of judicial officer misconduct or disability under 28 U.S.C. § 372(c) and otherwise is intended to be the exclusive remedy of the employee relating to rights enumerated under the plan.

### **2. Scope of coverage**

This Plan applies to all Article III judges and other judicial officers of the United States courts of appeals, district courts, and bankruptcy courts, **as well as to all employees of the courts of appeals, district courts, and bankruptcy courts, including judges' chambers staffs, court unit heads and their staffs, circuit executives and their staffs, federal public defenders and their staffs, and bankruptcy administrators and their staffs.**

### **3. Definitions**

#### **For purposes of this Plan -**

A. The term "employee" includes all individuals listed in Section 2 of this Chapter, as well as applicants for employment and former employees, except as provided below. The term "employee" does not include externs, applicants for bankruptcy judge or magistrate judge positions, private attorneys who apply to represent indigent defendants under the Criminal Justice Act, \_\_\_\_\_ defense investigators not employed by federal public defenders, volunteer counselors or mediators, or other individuals who are not employees of an "employing office" as that term is defined below.

....

## APPENDIX — F-2

**B. The term “employing office” includes all offices of the United States court of appeals, district courts, and bankruptcy courts, including the offices of circuit executives, district court executives, federal public defenders, clerks of court, chief probation officers, chief pretrial service officers, staff attorneys, chief preargument attorneys, circuit librarians, bankruptcy administrators, and any such offices that might be created in the future. The court is the employing office of a judicial officer’s chambers staff.**

**C. The term “judicial officer” means a judge appointed under Article III of the Constitution, a United States bankruptcy judge, a United States magistrate judge, or a judge of any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States.**

**D. The term “court” refers to the appropriate court (appeals, district or bankruptcy) in which is located the employing office which would be responsible for redressing, correcting or abating the violation alleged in the complaint. In the case of disputes involving federal public defenders, the term “court” refers to the appropriate court of appeals.**

### **CHAPTER II - EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-DISCRIMINATION RIGHTS**

**1. General - Discrimination against employees based on race, color, religion, sex (including sexual harassment), national origin, age (at least 40 years of age at the time of the alleged discrimination), and disability is prohibited. The rights and protections of Sections I through VII of the Judiciary’s Model Equal Employment Opportunity Plan shall also apply to employees.**

....

### **CHAPTER III - FAMILY AND MEDICAL LEAVE RIGHTS**

## APPENDIX — F-2

**1. General-** Title II of the Family and Medical Leave Act of 1993, 5 U.S.C. §6301 et seq., applies to court employees in the manner prescribed in Volume I - C, Chapter X, Subchapter 1630.1, Section R, of the *Guide to Judiciary Policies and Procedures*. . . .

### CHAPTER VIII - DISPUTE RESOLUTION PROCEDURES

1. . . . .

#### **2. General provisions and protection**

**A. Prohibition against retaliation** - Complainants under this Plan have the right to be free from retaliation, coercion, or interference because of filing a complaint pursuant to this Plan. Likewise, any person who participates in the filing or processing of a complaint, such as an employment dispute resolution coordinator, mediator, witness, representative, or co-worker, is also entitled to freedom from retaliation. . . .

#### **7. Complaint, review and hearing**

. . . .

#### **C. Hearing procedures**

**1. Hearing officer** - If the chief judge or designated officer does not dismiss the complaint under the preceding subsection, the chief judge or designated officer, acting as the hearing officer, shall hold a hearing on the **merits** of the complaint unless he or she determines that no material factual dispute exists.

#### **8. Remedies**

**A. . . .**

**B. Remedies** which may be provided to successful complainants under this Plan include, but are not limited to:

1. Placement of an employee in a position previously denied;
2. placement in a comparable alternative position;

## APPENDIX — F-2

3. Reinstatement to a position from which previously removed;
4. prospective promotion to a position;
5. Priority consideration for a future promotion or position;
6. back pay and associated benefits, including attorney's fees, where the statutory criteria of the Back Pay Act, 5 U.S.C. § 5596 are satisfied;
7. Records modification and or expungement;
8. "Equitable" relief, such as temporary stays of adverse actions;
9. Granting of family and medical leave; and
10. Accommodation of disabilities through the purchase of specialized equipment or the restructuring of duties and work hours.

## **APPENDIX — F-3**

*EXCERPTS from Guide to Judiciary Policies and  
Procedures in Relevant Part:*

### **JUDICIAL EQUAL EMPLOYMENT PROGRAM MODEL EQUAL EMPLOYMENT OPPORTUNITY PLAN**

**Judicial Conference of the United States  
March 1980  
(Rev. September 1986)**

#### **PREAMBLE**

The Judicial Conference of the United States has directed that each court adopt a plan in conformance with the national policy of providing equal employment opportunity to all persons regardless of their race, sex, color, national origin, religion, age (at least 40 years of age at the time of the alleged employment discrimination), or handicap. Each court will promote equal employment opportunity through a program encompassing all facets of personnel management including recruitment, hiring, promotion, and advancement. This program, which will be periodically evaluated, is not intended to modify or reduce the qualification standards for employment in the Federal courts as such standards have been approved by the Judicial Conference of the United States.

#### **SCOPE OF COVERAGE**

This Equal Employment Opportunity Program applies to all court personnel including judges' staffs and court officers and their staffs.

#### **ORGANIZATION**

##### **A. Implementation.**

The court shall implement the Equal Employment Opportunity Program. On behalf of the court, the Chief Judge will submit modifications in the plan for judicial council approval.

##### **B. Heads of Court Support Unit.**

The heads of each court support unit must ensure that all vacancies are publicly announced to attract candidates who represent the make-up of persons available in the qualified

## **APPENDIX — F-3**

labor market and all hiring decisions are based solely on job-related factors. They should make reasonable efforts to see that the skills, abilities, and potential of each employee are identified and developed, and that all employees are given equal opportunities for promotions by being offered, when the work of the court permits and within the limits of available resources, cross-training, reassignments, job restructuring, special assignments, and outside job-related training.

### **C. Judges, Court Managers, and Supervisors**

Judges and designated court managers and supervisors must apply equal employment opportunity practices and policies in their work units. This includes giving each employee a fair and equal opportunity to demonstrate his or her skills and, where those abilities exceed general performance standards, to be recommended for personnel actions and awards recognizing such achievements. As resources permit, it also requires providing training programs which enable employees to develop their job skills fully.

### **D. Equal Employment Opportunity Coordinator**

The court will designate one person to be the Equal Employment Opportunity Coordinator. This person will be responsible for collecting, analyzing, and consolidating the statistical data and statements prepared by each court unit. The Coordinator will then prepare an annual report for the Chief Judge and the Administrative Office describing the court's achievements in providing equal employment opportunities, identifying those areas in which improvements are needed, and explaining those factors inhibiting achievement of equal employment opportunity objectives. Based upon this evaluation and report, the Coordinator will recommend modifications in the plan to the court. The Coordinator will also seek to resolve discrimination complaints informally and will provide EEO information to the public.



## **APPENDIX — F-3**

### **PERSONNEL PRACTICES**

#### **A. Recruitment.**

Each court unit will seek qualified applicants who reflect the make-up of all such persons in the relevant labor market. Each unit will publicize all vacancies.

#### **B. . . .**

#### **C. Promotion.**

Each court unit will promote employees according to their experience, training, and demonstrated ability to perform duties of a higher level.

#### **D. Advancement.**

Each court unit will seek insofar as reasonably practicable to improve the skills and abilities of its employees through cross-training, job restructuring, assignments, details, and outside training. . . .

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## **JUDICIARY EQUAL EMPLOYMENT OPPORTUNITY PROGRAM**

### **APPENDIX 1**

#### **DISCRIMINATION COMPLAINT PROCEDURES** **Judicial Conference of the United States**

##### **I. SCOPE OF COVERAGE.**

All applicants for court positions and all court personnel may seek timely redress of discrimination complaints through these procedures. These procedures, however, are not intended to be a replacement for the working relationship which must exist between supervisors and employees, nor are they intended to interfere in the administrative processes of the courts.

##### **II. DEFINITION.**



## **APPENDIX — F-3**

A discrimination complaint is any allegation that a person has been denied employment, promotion, or advancement, or has been affected in any other condition of employment, because of his or her race, sex, color, national origin, religion, age (at least 40 years of age at the time of the alleged discrimination), or handicap. It also includes allegations of restraint, interference, coercion, discrimination, or reprisal because a person has raised an allegation of discrimination or has served as a representative, a witness, or an EEO Coordinator in connection with a complaint. It does not include complaints relating other dissatisfactions in a person's conditions of employment which are commonly known grievances.

### **III. RIGHTS OF PERSONNEL**

#### **A. Retaliation.**

Every complainant has the right to be free from retaliation, coercion, or interference because of filing a timely complaint.

....

#### **C. Notice.**

Every person against whom a complaint has been timely filed has the right to have notice of the charges filed against him or her. All persons involved have the right to reasonable notice of any hearing conducted on a complaint.

#### **D. Preparation.**

All court employees involved in a complaint procedure may use a reasonable amount of official time to prepare their case so long as it does not unduly interfere with the performance of their court duties.

### **IV. PROCEDURES**

[NOTE: This segment of the Model EEO Plan was replaced by the procedures of the Model EDR Plan, which was approved by the JCUS in March 1997].

## **APPENDIX — F-3**

### **JUDICIAL EQUAL EMPLOYMENT PROGRAM MODEL EQUAL EMPLOYMENT OPPORTUNITY PLAN**

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**Judicial Conference of the United States  
March 1980  
(Rev. September 1986)**

#### **PREAMBLE**

The Judicial Conference of the United States has directed that each court adopt a plan in conformance with the national policy of providing equal employment opportunity to all persons regardless of their race, sex, color, national origin, religion, age (at least 40 years of age at the time of the alleged employment discrimination), or handicap. Each court will promote equal employment opportunity through a program encompassing all facets of personnel management including recruitment, hiring, promotion, and advancement. This program, which will be periodically evaluated, is not intended to modify or reduce the qualification standards for employment in the Federal courts as such standards have been approved by the Judicial Conference of the United States.

#### **SCOPE OF COVERAGE**

This Equal Employment Opportunity Program applies to all court personnel including judges' staffs and court officers and their staffs.

#### **ORGANIZATION**

##### **A. Implementation.**

The court shall implement the Equal Employment Opportunity Program. On behalf of the court, the Chief Judge will submit modifications in the plan for judicial council approval.

## **APPENDIX — F-3**

### **B. Heads of Court Support Unit.**

The heads of each court support unit must ensure that all vacancies are publicly announced to attract candidates who represent the make-up of persons available in the qualified labor market and all hiring decisions are based solely on job-related factors. They should make reasonable efforts to see that the skills, abilities, and potential of each employee are identified and developed, and that all employees are given equal opportunities for promotions by being offered, when the work of the court permits and within the limits of available resources, cross-training, reassignments, job restructuring, special assignments, and outside job-related training.

### **C. Judges, Court Managers, and Supervisors**

Judges and designated court managers and supervisors must apply equal employment opportunity practices and policies in their work units. This includes giving each employee a fair and equal opportunity to demonstrate his or her skills and, where those abilities exceed general performance standards, to be recommended for personnel actions and awards recognizing such achievements. As resources permit, it also requires providing training programs which enable employees to develop their job skills fully.

### **D. Equal Employment Opportunity Coordinator**

The court will designate one person to be the Equal Employment Opportunity Coordinator. This person will be responsible for collecting, analyzing, and consolidating the statistical data and statements prepared by each court unit. The Coordinator will then prepare an annual report for the Chief Judge and the Administrative Office describing the court's achievements in providing equal employment opportunities, identifying those areas in which improvements are needed, and explaining those factors inhibiting achievement of equal employment opportunity objectives. Based upon this evaluation and report, the Coordinator will recommend modifications in the plan to the court. The

## **APPENDIX — F-3**

Coordinator will also seek to resolve discrimination complaints informally and will provide EEO information to the public.

### **PERSONNEL PRACTICES**

#### **A. Recruitment.**

Each court unit will seek qualified applicants who reflect the make-up of all such persons in the relevant labor market. Each unit will publicize all vacancies.

....

#### **C. Promotion.**

Each court unit will promote employees according to their experience, training, and demonstrated ability to perform duties of a higher level.

#### **D. Advancement.**

Each court unit will seek insofar as reasonably practicable to improve the skills and abilities of its employees through cross-training, job restructuring, assignments, details, and outside training.

## APPENDIX — F-4

*EXCERPTS from Guide to Judiciary Policies  
and Procedures in Relevant Part:*

**The Judiciary Fair Employment  
Practices      Annual Report  
Oct. 1, 1998-Sept. 30, 1999**

....

### **Preface**

This is the first Annual Report on the Judiciary Fair Employment Practices (FEP) Program. This report replaces the Annual Report on the Judiciary Equal Employment Opportunity Program.

*The Federal Judiciary Model Employment Dispute Resolution (EDR) Plan was adopted by the Judicial Conference of the United States (JCUS) in 1997 in order to provide the policy rights and protections to employees of the United States courts which are comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995.*

The Plan's procedures replace the procedures set forth in the Judiciary Model Equal Employment Opportunity (EEO) Plan, except for imposing demographic reporting requirements on the courts except for imposing demographic reporting requirements on the courts.

## APPENDIX — F-5

*EXCERPTS from Guide to Judiciary Policies and Procedures in Relevant Part:*

### THE NINE LAWS

Covered Under the Model Employment  
Dispute Resolution Plan

Robert Leosche. Deputy General Counsel, Office of the General Counsel, Administrative Office of the United States Courts.

Objective. Review and discuss the rights, protections, and remedies provided under the nine laws covered in the Model Dispute Resolution Plan.

Submitting Questions. To ask questions during the live broadcast, you can: Fax 1-800-488-0397; Push to talk; E-mail; [Trudi.Morrison@ao.uscourts.gov](mailto:Trudi.Morrison@ao.uscourts.gov)

#### The Nine Laws:

1. Title VII
2. ADEA
3. Rehabilitation Act
4. ADA
5. FMLA
6. USERRA
7. OSHA
8. EPPA
9. WARN

#### Covered Employment Issues <sup>1</sup>

---

<sup>1</sup> Notations below in brackets apply to Petitioner's allegations



## **APPENDIX — F-5**

**1. Employment event or action such as non-selection, denial of training, discipline, harassment, or a negative performance evaluation;**

**2. Must be covered under Model EDR Plan**

[Non promotion on several instances; refusal to accommodate training specific to major duties; computer harassment after filing of initial EDR complaint, impeding employee's work; after-the-fact justification on employee's unsatisfactory performance relating to the retaliatory actions of the employing office. See dates on those documents and compare with the dates while Petitioner was involved in protected activity.].

**Title VII of Civil Rights Act of 1964. Prohibits discrimination based on:**

1. Race
2. Sex, including sexual harassment
3. Color
4. National Origin
5. Religion
6. Retaliation

[Other than religion, all apply to Petitioner's allegations as covered by the Plan at the filing of the initial EDR complaint, March 12, 2002. Issues were never properly, impartially adjudicated or resolved. Retaliatory actions such as computer monitoring, impeding Petitioner's work resulting to harassment and hostile work environment. Unwelcome conduct and behavior related to national origin, race, color, and age—reasonably inferred discriminatory since one of the major issues of concern was not promotion on several instances.].

**Hostile Work Environment.** Unwelcome conduct has the purpose or effect of: unreasonably interfering with an individual's work performance, or; creating an intimidating, hostile or offensive work environment. Sufficiently severe or pervasive.



## APPENDIX — F-5

[Ten days after filing of the initial EDR complaint, Petitioner notified the responsible officer, but computer harassment never stopped, impeding employee's work, through the retaliatory termination action].

**Retaliation or Reprisal:** Prior protected activity; adverse employment action; causal connection; available under Title VII, ADEA and Rehabilitation Acts.

[Petitioner filed the initial EDR complaint of Intentional Discrimination and Disparate Treatment Under Title VII of the Civil Rights Act of 1964 based on national origin, color, race, age, sex. Adverse action of involuntary termination, inferred as retaliatory termination, other retaliatory actions, and reprisal had causal connection with the EDR complaint filed on March 12, 2002].

**Age Discrimination in Employment Act of 1957.**

[Employee/Petitioner was 45 + year's old at the time the first promotion opportunity was withheld in 1996].

**ADEA. Prohibits discrimination based on age:** 40 years (or older) when the violation occurred; Age must be a determinative factor.

[See immediately above].

**Americans with Disability Act of 1990 and the Rehabilitation Act of 1973.**

[One of employer's "legitimate" reasons for termination was "perceived mental disability." Employer could not legitimately justify the reason; furthermore, employer's reason and action were unlawful. Employer "perceived mental disability" due to inordinate amounts of work-related stress and hostile work environment due to the filing of the first EDR complaint. Employer induced work-related hostility and stress causing hostile work environment—impeding employee's work. Employee/Petitioner was overburdened by work hostility and stress—not mental disability as employer asserted].

## APPENDIX — F-5

### **Family and Medical Leave Act of 1993.**

[Applies to the instant case during the pendency of the first EDR case. Employer treated Petitioner differently when she requested for FMLA leave. Employee's mother suffered irreversible stroke on April 12, 2002, and eventual death on May 8, 2002. Employee's mother lived in California. While employee's leave were available, employer demanded employee to return to work. During the same year, at the pendency of the employee's case, two other employees, both females and black, suffered undue personal hardships. Both employees were placed on FMLA, one with less than the required balance of 80 hours sick leave. Another employee was a two-year term employee, with less than one year of employment with the employing office, was allowed to take leave under FMLA. Same term employee was also court-approved to receive leave under Voluntary Leave Sharing Program. She received more than 400 hours of donated leave. This term employee was not qualified to receive leave under the AO/court personnel rules and to be placed under the program, because the employee had less than one year of employment with the office. After the voluntary-donated leave was exhausted, the employee resigned].

## APPENDIX — F-6

### EXCERPTS from the Eleventh Circuit U.S. Court of Appeals Personnel Manual in Relevant Part:

10.00.00

#### SECTION 10

#### **ELEVENTH CIRCUIT COURT OF APPEALS EMPLOYMENT DISPUTE RESOLUTION PLAN (EDR Plan)**

##### **§1 Preamble.**

*This is the Employment Dispute Resolution Plan ("EDR Plan") of the Eleventh Circuit Court of Appeals. It is based on the Federal Judiciary Model Employment Dispute Resolution Plan adopted by the Judicial Conference of the United States and on the Model Employment Dispute Resolution Plan of the Eleventh Circuit and provides rights, protections and procedures for employees of the Eleventh Circuit Court of Appeals comparable to those provided to Legislative branch employees under the Congressional Accountability Act of 1995.*

On its effective date this Plan supersedes the Equal Employment Opportunity Plan ("EEO Plan") previously adopted by this Court. . . .

##### **§2 Scope of coverage.**

This Plan applies to all Court employees and staff, except that it does not apply to judicial officers or to employees, staff, or applicants for employment in a judicial chambers staff unit, unless the full-time staff positions in such judicial chambers staff unit exceeds ten in number. Compare 42 U.S.C. Section 2000e(b). A judicial chambers staff unit is defined as the personal staff of a judicial officer, which has fewer than ten full-time employees, and whose members are selected for their position on the staff by the judicial officer and are supervised by that officer.

## APPENDIX — F-6

### §3 Definitions.

For purposes of this Plan —

**A.** The term “employee” does not include a person employed, appointed, or applying for employment, appointment, or reappointment —

....

● court unit executive (i.e., circuit executive, clerk of court, senior staff attorney, circuit librarian chief circuit mediator, bankruptcy administrator, federal public defender)

....

**B.** The term “employing office” for purposes of coverage under this EDR Plan includes all offices of the Court, including the offices of the circuit executive, clerk of court, senior staff attorney, circuit librarian, chief circuit mediator, bankruptcy administrator or federal public defender and any other offices that might be created in the future.

**C.** The term “judicial officer” means a United States circuit judge.

**D.** The term “judicial chambers staff unit” refers to the personal staff of a judicial officer, which has fewer than ten full-time employees, and whose members are selected for their positions on the staff by a judicial officer and are supervised by that officer.

**E.** The term “Court” refers to the United States Court of Appeals for the Eleventh Circuit unless the context clearly indicates otherwise.

**F.** The term “court unit executive” refers to the person most directly involved in or responsible for the employment decisions relating to employees and includes the circuit

## APPENDIX — F-6

executive, clerk of court, senior staff attorney, circuit librarian, chief circuit mediator, bankruptcy administrator, federal public defender. . . .

### CHAPTER II. EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-DISCRIMINATION RIGHTS

**§1 General.** *Discrimination against employees based on race, color, religion, sex (including sexual harassment), national origin, age (at least 40 years of age at the time of the alleged discrimination or disability is prohibited. The rights and protections previously afforded by this Court's EEO Plan have been incorporated into this Plan.. . .*

**§3 Special provisions relating to age.** The provisions of Section 1 of this Chapter relating to age—

. . . .

B. do not preclude consideration of appropriate training, experience, and education, notwithstanding the fact that such factors may be greater for older persons. . . .

**§5 Special provisions relating to sexual harassment.** Employees of the Court shall not engage in sexual harassment of co-workers, subordinates, or supervisors. Sexual harassment proscribed by this paragraph includes —

A. Deliberate or repeated unsolicited and unwelcomed verbal comments, gestures, or physical contact of a sexual nature, and . . . .

#### **§6 Other policies**

A. Consideration may be given in an employment decision to the length of a person's employment with the Court. Persons are not entitled, however, to preferential treatment based on length of service.



## APPENDIX — F-6

B. Efforts to accomplish the legitimate and worthy objectives of nondiscrimination must not infringe upon the principles of equal employment opportunity stated in Section 1 of this Chapter. Special recruitment efforts may properly be directed towards qualified individuals in unrepresented or under-represented segments of the available labor force, provided however that no such efforts should imply that qualified persons from other segments of the available labor force are disqualified or in any way discouraged from also becoming applicants. Vacancies shall be publicized in a manner likely to reach qualified persons of all segments of the available labor market.

### CHAPTER III. FAMILY AND MEDICAL LEAVE RIGHTS

**§1 General.** Title II of the Family and Medical Leave Act of 1993, 29 U.S.C. Section 2611, applies to Court employees in the manner prescribed in Volume I-C, Chapter X, Subchapter 1630.1, Section R, of the Guide to Judiciary Policies and Procedures. Coverage is limited to employees who are covered by the annual and sick leave program established under Chapter 63 of Title 5 of the United States Code and who have completed at least 12 months of civilian service with the Federal Government. . . .

### CHAPTER VII. DISPUTE RESOLUTION PROCEDURES

....

#### **§2 General provisions and protections.**

**A. Prohibition against retaliation.** *The Court, any court unit executive, or their assistants, shall not retaliate against, coerce or interfere with a complainant or anyone participating in the filing and processing of a complaint. However, the filing or pursuit of a frivolous or malicious discrimination complaint, or the presentation of knowingly false information may, if relevant, be considered*

## APPENDIX — F-6

in subsequent employment decisions or in the evaluation of the merits of subsequent discrimination complaints involving the same person. . .

### **§7 Complaint, review and hearing.**

....

#### **C. Hearing procedures.**

(1) **Hearing officer.** If the chief judge or designated judicial officer does not dismiss the complaint under the preceding subsection, the chief judge or designated judicial officer, acting as the hearing officer, shall hold a hearing on the merits of the complaint unless he or she determines that no material factual dispute exists.

....

### **§9 Remedies.**

**A.** Where judicial officers acting pursuant to Section 7 or 8 of this Chapter find that a substantive right protected by this Plan has been violated, they may order a necessary and appropriate remedy. A remedy may be directed at correcting a past violation, prospectively ensuring compliance with the rights protected by this Plan, or both. A remedy shall be tailored as closely as possible to the specific violation involved.

**B.** Remedies which may be provided to successful complainants under this Plan include, but are not limited to:

- (1) placement of an employee in a position previously denied;
- (2) placement in a comparable alternative position;
- (3) reinstatement to a position from which previously removed;
- (4) prospective promotion to a position;
- (5) preferred consideration for a future promotion or placement in another position for which the complaining party is qualified;
- (6) subject to appropriation, back pay and associated benefits, pursuant to 5 U.S.C. § 5596;



## **APPENDIX — F-6**

- (7) records modification and/or expungement;
- (8) "equitable" relief; such as temporary stays of adverse actions;
- (9) granting of family and medical leave; and
- (10) accommodation of disabilities through the purchase of specialized equipment or the restructuring of duties and work hours.

### **CHAPTER VIII. REVIEW PROCEDURES**

....

#### **§1 E. Decision by Judicial Council.**

(1) A petition for review placed on the agenda of a meeting of the Judicial Council shall be decided by a majority of the non disqualified members of the Judicial Council present at the meeting.

(2) The Judicial Council may enter an order (affirming the original decision or summary dismissal; (b) directing further investigation; or c) directing corrective action including remedies set forth in Section 9 of Chapter VII of this Plan. The Judicial Council may also take any other action within its authority pursuant to 28 U.S.C. §§ 332, 372.

(3) The order of the Judicial Council may be accompanied by a separate memorandum setting forth facts and containing findings and conclusions made by the Judicial Council. The order shall be accompanied by any separate or dissenting statements by members of the Judicial Council.

**APPENDIX — F-7**

**06/26/03 THU 09:24 FAX**

**UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT  
56 Forsyth Street, NW  
Atlanta, Georgia 30303**

**FAX TRANSMITTAL**

**TO: EVELYN JOHNSON**  
**FROM: CHERYL VESSELS, HUMAN RESOURCES  
MANAGER**

**FAX (703) 221-8465**

**DATE: JUNE 26, 2003**

**DOCUMENT DESCRIPTION: (see below and 4-page  
attachment)**

**MESSAGE: Evelyn:**

**Per your request, attached is Appendix II of the  
Personnel Manual**

**Cheryl Vessels  
(404) 335-6212—telephone  
(404) 335-6132—FAX  
[cheryl\\_vessels@ca11.uscourts.gov](mailto:cheryl_vessels@ca11.uscourts.gov)**

## APPENDIX — F-7

### APPENDIX II

#### ADVERSE PERSONNEL ACTION POLICY OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

##### DEFINITION

- (1) **Adverse Personnel Action** - A personnel action which adversely affects an employee's pay or position. It includes such personnel actions as removal or involuntary termination (other than the abolition of a position); demotion; or a performance rating of "fair" or "unsatisfactory" which results in the employee being denied a within-grade increase.
- (2) **Documentation** - Physical evidence which supports the need for the adverse personnel action. It may take the form of letters or memoranda of warning or reprimand, notes for the record, telephone conversations, leave record (SF 71 or 77), examples of poor quality work, etc.
- (3) **Notice of Proposed Adverse Action** - A letter or memorandum to the employee advising the employee that an adverse action has been proposed to be taken against him or her and advising the employee of his or her rights to request within 10 calendar days, a hearing before the chief judge or his designee.
- (4) **Notice of Adverse Action** - A letter or memorandum to the chief judge or his designee from the employee, requesting a hearing on the adverse action proposed to be taken against him or her.
- (5) **Request for Hearing** - A letter or memorandum to the chief judge or his designee from the employee, requesting a hearing on the adverse action proposed to be taken against him or her.

## APPENDIX — F-7

- (6) **Notice of Hearing** - A letter or memorandum from the chief judge or his designee to each of the interested parties in the appeal advising of the date, time and place that the hearing will be held.
- (7) **Hearing** - Review of the adverse action by the chief judge or his designee, attended by the employee, the proposing officer, and their representative, if any.
- (8) **Notice of Decision** - Written confirmation of the decision and the reasons therefore.
- (9) **Time limit** - The number of calendar days, including Saturdays, Sundays, and holidays, within which an individual must take a specific action. If the 1<sup>st</sup> day of the time limit is a non-workday, the limit is automatically extended to the next workday.
- (10) **Calendar Day** - is the 24 hour period between 12 midnight and 12 midnight. The day on which the notice is delivered is not counted (it is not a full calendar day) in computing the notice period.

### **NOTICE OF PROPOSED ADVERSE ACTION**

After reasonably exhausting various techniques available to improve an employee's job performance to an acceptable level, a supervisor may have reason to believe that there are no further options other than to initiate an adverse personnel action against the employee. The supervisor should prepare a letter or memorandum to the employee, citing all pertinent information which justifies the adverse action; summarizing efforts which were made to correct the situation, if any; and advising the employee of the nature of the adverse action proposed and the date on which it is proposed to be effective. In addition, the supervisor should advise the employee of his or her right to make written request of the chief judge or his designee within 10 calendar days for a hearing. The notice must also advise the

## APPENDIX — F-7

employee of his or her right to be represented in the hearing and the right to confront adverse witnesses and present evidence and arguments.

### Administrative Leave

In those instances where retention of the employee in an active duty status may adversely affect the court, or may be injurious to the employee, his fellow workers or the general public, the employee will remain in an active duty status although the employee may be relieved of official duties, i.e., be assigned non-sensitive duties and responsibilities pending final adverse action.

If an employee's retention in active duty status would not adversely affect the court or be injurious to the employee, his fellow workers, or the general public, the employee will remain in an active duty in non-duty status with pay (administrative leave) for a maximum of five calendar days, during which time the notice or proposed action should be prepared. The employee will then be either suspended without pay, terminated, or placed on leave with his or her consent pending resolution of the proposed adverse action.

If an employee's retention in active duty status would not adversely affect the court or be injurious to the employee, his fellow workers, or the general public, the employee will remain in an active duty status although the employee may be relieved of official duties, i.e., be assigned non-sensitive duties and responsibilities pending final resolution of the adverse action.

Prior to authorizing non-duty status with pay (administrative leave) for more than one day the circuit executive will be contacted to confirm that the proper criteria have been met for authorizing administrative leave up to the maximum of five days.

## APPENDIX — F-7

### **REQUEST FOR HEARING**

If the employee desires a hearing on the adverse action or proposed adverse action, the employee must submit a letter or memorandum to the chief judge within 10 calendar days of receipt of the notice or proposed adverse action or notice of adverse action, advising of his or her desire for a hearing.

### **NOTICE OF HEARING**

Within five calendar days of receipt of the request hearing, the chief judge or his designee will advise each party in the action of the date and time the hearing will be held. The hearing will be scheduled within a reasonable amount of time from receipt of the request for hearing.

### **HEARING**

The hearing will be made a part of the record. The hearing will be attended by the employee; the employee's representative, if any; the supervisor proposing or taking the action; and that officer's representative, if any. Both the employee and the supervisor may present witnesses and/or make statements if desired. At the conclusion of the hearing a decision as to whether or not the adverse action or proposed adverse action will be approved will be made in writing. The decision is final without further administrative review.

### **NOTICE OF DECISION**

Within 10 calendar days of the conclusion of the hearing all interested parties will be advised in writing of the decision and will be provided a statement of the reason for that decision.

If it is found that the adverse action or proposed adverse action is totally without merit, then the notice should also advise all parties that any documents which were generated as a result of the adverse action or proposed adverse action will be removed from the employee's record.



## APPENDIX — F-7

If, however, the decision is to approve or modify the proposed adverse action, the supervisor may proceed to issue notice of adverse action and all documents remain part of the employee's record.

### **NOTICE OF ADVERSE ACTION**

Once the proposed action has been approved, the supervisor shall prepare a letter or memorandum to the employee advising the employee of the nature of the adverse action and the date it will take effect. If the employee has not previously been advised of his right to request in writing, within 10 calendar days, a hearing before the chief judge or his designee the notice of adverse action must so advise. It is preferable that the hearing, if requested, be granted prior to the effective date of the action, but it is not mandatory. If the notice of adverse action is being issued without a notice of proposed action having been previously issued, the notice of adverse action should contain all elements of a proposed notice and, in addition, advise the employee that should the action be vacated as a result of the hearing before the chief judge or his designee the employee will be returned to his status prior to the action as if no action and had been taken and all documents will be removed from the record.

### **[NOTES FROM THE PETITIONER]**

[Shortly after the October 29, 2003, adverse action of termination hearing was held, on November 6, 2003, Judge Brill issued her decision. Shortly thereafter, on November 19, I received a notification letter from Naomi Godfrey of the official termination date of Friday, November 14, 2003. The lump sum money I received for unused annual leave suggested, which was issued on December 19, 2003, two pay periods from the official date (November 14) of the termination (the usual processing time and personnel procedure for separating employees), my official termination date was November 14, 2003. (See Exh. \_\_)].

[On the face of it, although chief judge Edmondson



issued the letter dated **December 1, 2003**, to judge Brill, it was another attempt to cover up misconduct and circumvent the processing of the 2003, second EDR complaint (retaliatory termination due to the filing of the 2002 EDR complaint), because as the lump sum check for unused annual leave suggested, **I was already officially terminated on November 14, 2003.** (See Exhs. \_\_ & \_\_).

## APPENDIX — F-8

EXCERPTS from Title 5, Code of Federal Regulations,  
sections 1.2, 1.3, 212, 1201, in Relevant Parts:

[Code of Federal Regulations]  
[Title 5, Volume 1]  
[Revised as of January 1, 2004]  
[CITE: 5CFR1.2]

### **TITLE 5 – ADMINISTRATIVE PERSONNEL CHAPTER I – OFFICE OF PERSONNEL MANAGEMENT**

#### **PART 1 – COVERAGE AND DEFINITIONS (RULE 1)**

##### **Table of Contents**

##### **Sec. 1.2 Extent of the competitive service.**

**The competitive service shall include: (a) All civilian positions in the executive branch of the Government unless specifically excepted therefrom by or pursuant to statute or by the Office of Personnel Management (hereafter referred to in this subchapter as OPM) under Sec. 6.1 of this subchapter; and (b) all positions in the legislative and judicial branches of the Federal Government and in the Government of the District of Columbia which are specifically made subject to the civil service laws by statute. OPM is authorized and directed to determine finally whether a position is in the competitive service.**

---

**[CITE: 5CFR1.3]**

##### **Sec. 1.3 Definitions.**

As used in the rules in this subchapter:

(a) Competitive service shall have the same meaning as the words “classified service”, or “classified (competitive) service”, or “classified civil service” as defined in existing statutes and executive orders.

## APPENDIX — F-8

(b) Competitive position shall mean a position in the competitive service.

(c) Competitive status shall mean basic eligibility to be a noncompetitively selected to fill a vacancy in a competitive position. A competitive status shall be acquired by career-conditional or career appointment through open competitive examination upon satisfactory completion of a probationary period, or may be granted by statute, executive order, or the Civil Service Rules without competitive examination. A person with competitive status may be promoted, transferred, reassigned, reinstated, or demoted without taking an open competitive examination, subject to the conditions prescribed by the Civil Service Rules and Regulations.

(d) An employee shall be considered as being in the competitive service when he has a competitive status and occupies a competitive position unless he is serving under a temporary appointment: Provided, that an employee who is in the competitive service at the time his position is first listed under Schedule A, B, or C shall be considered as continuing in the competitive service as long as he continues to occupy such position. . . .

(e) Tenure shall mean the period of time an employee may reasonably expect to serve under his current appointment. Tenure shall be granted and governed by the type of appointment under which an employee is currently serving without regard to whether he has a competitive status or whether his appointment is to a competitive position or an excepted position.

[CITE: 5CFR212.101]

**PART 212 – COMPETITIVE SERVICE AND**

**COMPETITIVE STATUS – Table of Contents**

**Subpart A – Competitive Service**

**Sec. 212.101 Definitions**

In this chapter:

**(a) Competitive service has the meaning given that term by section 2102 of title 5, United States Code, and includes:**

(1) All civilian positions in the executive branch of the Federal Government not specifically excepted from the civil service laws by or pursuant to statute, by the President, or by the Office of Personnel Management, and not in the Senior Executive Service; and

(2) All positions in the legislative and judicial branches of the Federal Government and in the government of the District of Columbia specifically made subject to the civil service laws by statute. . . .  
**5 U.S.C. § 2102(a)(2).**

**(b) Competitive position means a position in the competitive service.**

**Subpart C — Competitive status.**

**5 U. S.C. § 212.301 Competitive status defined.**

In this chapter, competitive status means an individual's basic eligibility for noncompetitive assignment to a competitive position. **Competitive status is acquired automatically by completion of a probationary period under a career-conditional or career appointment, . .**

**Subpart E—Career or Career-Conditional  
Employment by Transfer**

**§ 315.501 Transfer.**

Subject to part 335 of this chapter, an agency may appoint by transfer to a competitive service position, without a break in service of a single workday, a current career or career-conditional employee of another agency.

[60 FR 53504, Oct. 16, 1995]

**§ 315.502 Tenure on transfer.**

(a) General rule. Except as provided in paragraph (b) of this section, a career employee who transfers remains a career employee and a career-conditional employee who transfers remains a career-conditional employee.

(b) Exceptions. (1) A career-conditional employee who transfers to a position required by law to be filled on a permanent basis becomes a career employee. (2) . . .

**§ 315.503 Acquisition of competitive status.**

An employee who was serving probation when he was appointed under § 315.501 acquires a competitive status automatically on completion of probation.

**PETITIONER'S NOTES**

[(See, Appendix 2F, Chapter 1, . . . 2. Scope of coverage) "This Plan applies to all Article III judges and other judicial officers of the U.S. courts of appeals . . . as well as to all employees of the courts of appeals, . . . court unit heads, and their staffs. . . ."]

**Definitions.**

**"A.** The term 'employee' includes listed in Section 2 of this Chapter. . . .

**B.** The term 'employing office' includes all

## APPENDIX — F-8

offices of the U.S. courts of appeals, . . . including the offices of . . . , staff attorneys, . . .

C. The term 'judicial officer' means a judge appointed Article III of the Constitution . . . a U.S. magistrate judge, or a judge of any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States. . . .

D. The term 'court' refers to the appropriate courts (appeals, . . . ) in which is located the employing office which would be responsible for redressing, correcting or abating the violation alleged in the complaint. . . ."

---

[Title 5, Volume 3]

[Revised as of January 1, 2003]

[CITE: 5CFR1201.3]

### TITLE 5— ADMINISTRATIVE PERSONNEL CHAPTER II - MERIT SYSTEMS PROTECTION BOARD

#### PART 1201 - PRACTICES AND PROCEDURES - Table of Contents Subpart A- Jurisdiction and Definitions

##### Sec. 1201.3 Appellate jurisdiction.

(a) Generally. The Board has jurisdiction over appeals from agency actions when the appeals are authorized by law, rule, or regulation. These include appeals from the following actions.

(1) Reduction in grade or removal for unacceptable performance (5CFR part 432; 5 U.S.C. 4303(e); . . .

....



## APPENDIX — F-8

(6) **Determinations affecting the rights or interests of an individual or of the United States under the Civil Service Retirement System or the Federal Employees' Retirement System (5 CFR parts 831, 839, 842, 844, and 846; 5 U.S.C. 8347(d) (1) - (2) and 8461 (e) (1); and 5 U.S.C. 8331 note, Federal Erroneous Retirement Coverage Corrections Act).**

[CITE: CFR1201.56]

### **Subpart B – Procedures for Appellate Cases Sec. 1201.56 Burden and degree of proof; affirmative defenses**

(a) **Burden and degree of proof – (1) Agency:** Under 5 U.S.C. 7701(c)(1), and subject to the exceptions stated in paragraph (b) of this section, the agency action must be sustained if:

....

(i) It is brought under 5 U.S.C. 3592 (a) (3), 5 U.S.C. 4303 or 5 U.S.C. 5335 and is supported by substantial evidence; or

(ii) It is brought under any other provision of law or regulation and is supported by a preponderance of the evidence.

....

(c) **Definitions.** The following definitions apply to this part:

(1) **Substantial evidence.** The degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate support a conclusion, even though other reasonable persons might disagree. This is a lower standard of proof than preponderance of the evidence.

(2) **Preponderance of evidence.** The degree of relevant evidence that a reasonable person, considering the



## APPENDIX — F-8

record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.

EXCERPTS from Title 5 United States Code, Sections 7511, 1.2, 1.3, 212, 1201, in Relevant Parts:

**UNITED STATES CODE  
TITLE 5, PART III  
Subpart F, CHAPTER 75  
SUBCHAPTER II, Sec. 7511**

**Sec. 7511. — Definitions; application**

(a) For the purpose of this subchapter —

(1) “employee” means —

(A) an individual in the competitive service —

(i) who is not serving a probationary or trial period under an initial appointment; or

(ii) who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;

(B) a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions —

(i) in an executive agency; or

(ii) in the United States Postal Service or Postal Rate Commission; and

(C) an individual in the excepted service (other than preference eligible)

(i) who is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service.

APPENDIX — F-8

EXCERPTS from Title 28 United States Code, Sections 602, 604 in Relevant Parts:

[CITE: 28USC602]

TITLE 28 -  
JUDICIARY AND JUDICIAL PROCEDURE

PART III -  
COURT OFFICERS AND EMPLOYEES

CHAPTER 41 -  
ADMINISTRATIVE OFFICE OF UNITED STATES  
COURTS

**Sec. 602. Employees**

(a) The Director shall appoint and fix the compensation of necessary employees of the Administrative Office in accordance with the Administrative Office of the United States Courts Personnel Act of 1990. . . .

....

*(d) All functions of other officers and employees of the Administrative Office and all functions of organizational units of the Administrative Office are vested in the Director. The Director may delegate any of the Director's functions, powers, duties, and authority (except the authority to promulgate rules and regulations) to such officers and employees of the judicial branch of Government as the Director may designate, and subject to such terms and conditions as the Director may consider appropriate; and may authorize the successive redelegation of such functions, powers, duties, and authority as the Director may deem desirable. All official acts performed by such officers and employees shall have the same force and effect as though performed by the Director in person.*

(June 25, 1948, ch. 646, 62 Stat. 913; Pub. L. 95-539, Sec. 5, Oct. 28, 1978, 92 Stat. 2044; Pub. L. 101-474, Sec. 5(a), (q),

## **APPENDIX — F-8**

Oct. 30, 1990, 104 Stat. 1099, 1101; Pub. L. 101-650, title III, Sec. 325(b)(4), Dec. 1, 1990, 104 Stat. 5121.)

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**[CITE: 28USC604]**

### **Sec. 604 Duties of Director generally**

**(a) The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States, shall**

**(1) Supervise all administrative matters relating to the offices of clerks and other clerical and administrative personnel of the courts; . . . .**

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**APPENDIX — F-9**

**EXCERPTS from Title 29 Code of Federal  
Regulations, Section 1614 in Relevant Parts:**

**[CITE: 29CFR1614.106]**

**TITLE 29 — LABOR  
COMMISSION**

**PART 1614 — FEDERAL SECTOR  
EQUAL EMPLOYMENT OPPORTUNITY  
— Table of Contents**

**Sec. 1614.106 Individual Complaints.**

(a) . . . .

. . . .

(d) A complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like or related to those raised in the complaint. After requesting a hearing, a complainant may file a motion with the administrative judge to amend a complaint to include issues or claims like or related to those raised in the complaint.

## APPENDIX — F-10

### EXCERPTS from Guide to Judiciary Policies and Procedures, CHAPTER X, PERSONNEL IN RELEVANT PARTS:

#### 1. RECRUITMENT

##### 1.1 When to Advertise

The Judicial Conference Policy adopted in 1980 requires that all vacancies be publicly announced. This includes but is not limited to whenever:

- A new position is established;
- A position is vacated;

In addition, an internal applicant must compete for a position which has greater promotion potential than their current position.

It is recommended that judiciary units advertise when:

- A temporary promotion opportunity exists. (If the position is advertised with a statement that the position may later become permanent, further advertising is not required. For example, if an employee who was selected on a temporary basis is later selected on a permanent basis, further advertising is not required.)

- A training opportunity exists whereby an employee would gain additional knowledge, skills, and abilities which may later qualify him/her for a higher classification. . . .

....

#### 3.5 CPS PAY SETTING

- Pay setting is the process of establishing the correct pay rate from the pay table for an employee based on the nature of the personnel action(s) taken that affects the employee.

- The pay setting official has the discretion to set

## APPENDIX — F-10

initial pay for supervisory or nonsupervisory employees anywhere within the developmental range through step 25, provided the employee meets the optional or "extra" years of experience above minimum as stated in the job qualifications standards. . . .

— CPS is comprised of "banded" levels, that is classification levels that incorporate two or three JSP grades.

### RECLASSIFICATION

— a CPS reclassification is the change of the title and/or duties and responsibilities or an existing position. The change may or may not involve in classification level. If the reclassification involves moving the employee from one classification level to a higher level, it is also a promotion and pay-setting is based on the promotion action.

### PROMOTION

— A CPS promotion is a personnel action that moves an employee from one classification level to a higher level. To set pay for a promotion action, pay is increased to the lowest pay step for the level to which promoted that will provide an increase of at least 6% above the pay immediately prior to promotion.

— In no case may an employee be paid less than 6% above the pay immediately prior to promotion to the higher level.

### JOB QUALIFICATIONS STANDARDS

<u>LEVEL</u>	<u>REQUIRED EDUCATION/EXPERIENCE</u>
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CL-21	High school graduation or equivalent
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CL-22	High school graduation or equivalent for placement at salary levels above minimum up to and including step 25 (considering any court-preferred skills and an evaluation of the quality of any general experience), one or more years of general experience.
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## APPENDIX — F-10

**CL-23** High school graduation or equivalent, plus two years general experience. For placement at salary levels above minimum up to and including step 25 (considering court-preferred skills and an evaluation of quality of experience), at least one year specialized experience.

**CL-24** One year specialized experience equivalent to work at CL-23. For placement at salary levels above minimum up to and including step 25 (considering court-preferred skills and an evaluation of quality of experience), at least two years specialized experience equivalent to work at CL-23.

**CL-25** Two years specialized experience, including at least one year equivalent to work at CL-24.

For placement at salary levels above minimum up to and including step 25 (considering court-preferred skills and an evaluation of quality of experience), at least two years specialized experience equivalent to work at CL-24.

**CL-26** Three years specialized experience, including at least one year equivalent to work at the CL-25.

For placement at salary levels above minimum up to and including step 25 (considering court-preferred skills and an evaluation of quality of experience), at least two years specialized experience equivalent to work at CL-25.

**CL-27** Three years specialized experience, including at least one year equivalent to work at the CL-26.



## APPENDIX — F-10

### JOB QUALIFICATIONS STANDARDS

#### PROFESSIONAL ADMINISTRATIVE POSITIONS

#### MANDATORY REQUIREMENTS\*

The chart below shows the minimum job qualifications requirements for each level within the occupational grouping. An applicant meeting the requirements and who is selected for any level would also qualify for the minimum pay rate of that level, i.e., Step 1.

CLASS. LEVEL	REQUIRED EDUCATION	EXPERIENCE**
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CL-23	High school graduation or equivalent	Three years general experience
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#### REQUIRED EXPERIENCE\*\*

CL-25	One year specialized experience equivalent to work at CL - 23.
CL-27	Two years specialized experience, including at least one year equivalent to work at CL-25.
CL-28	Three years specialized experience, including at least one year equivalent to work at CL-27.
CL-29	Three years specialized experience, including at least one year equivalent to work at CL-28.
CL-30	Three years specialized experience, including at least one year equivalent to work at CL-29.

## APPENDIX — F-10

[PETITIONER'S NOTE: Although Sara Gilibert (F/W) has a JD, she did not meet the mandatory requirements of the position she now holds, did not have three years specialized experience, specially in federal government personnel, never worked with the federal government, but she started work at CL 30 level, four grades higher than the Petitioner. Petitioner applied for the position but never considered, and her application was the only application that did not go through the usual hiring process. Furthermore, as a result of the SAO reorganization, Petitioner's former position she held for 3 ½ years was divided into two separate positions, Sara Gilibert's (F/W) and Jackie Williams' (F/B) positions. Williams also never worked in federal personnel and was not qualified for the position.]

CL-31      Three years specialized experience, including at least one year equivalent to work at CL-30.

- \*      Courts require additional job qualifications, known as selective factors, such as language requirement.
  - \*\*     Refer to the occupational grouping involved for permissible educational substitutions.
-

## APPENDIX — F-11

### Volume I-C, Chapter X, Subchapter 1630.1, Judiciary Leave Policy of the Guide to Judiciary Policies and Procedures.

#### **9.3 The Family and Medical Leave Act (FMLA)**

The Family and Medical Leave Act entitles an employee to 12 weeks of unpaid leave during any 12-month period, under circumstances set forth in Volume I-C, Chapter X, Subchapter 1630.1, Judiciary Leave Policy of the Guide to Judiciary Policies and Procedures.

- An employee is entitled to coverage under FMLA if he/she:
- is covered by the Judiciary Leave Policy; and has completed at least 12 months of civilian service with the federal government.
- Intermittent employees, law clerks who are specifically exempted by their appointing judge, and secretaries hired before September 30 1983, who are not covered by the Leave Act are excluded from coverage.

#### **9.4 Voluntary Leave Sharing Program**

The Voluntary Leave Sharing Program allows an individual employee who experiences a personal or family medical emergency and exhausts all available paid leave to use annual leave donated by fellow employees. This program applies to all judiciary employees authorized to accrue leave as noted in Volume I-C, Chapter X, Section A of Subchapter 1630.1, of the Guide to Judiciary Policies and Procedures.

**APPENDIX — G**  
**[1 — 14]**

	<b>NO. OF PAGES</b>
<b>Motion for Relief</b>	<b>22</b>
<b>G — 1</b>	<b>3</b>
<b>G — 2</b>	<b>4</b>
<b>G — 3</b>	<b>2</b>
<b>G — 4</b>	<b>12</b>
<b>G — 5</b>	<b>4</b>
<b>G — 6</b>	<b>2</b>
<b>G — 703</b>	<b>2</b>
<b>G — 702</b>	<b>2</b>
<b>G — 701</b>	<b>2</b>
<b>G — 700</b>	<b>2</b>
<b>G — 799</b>	<b>2</b>
<b>G — 798</b>	<b>2</b>
<b>G — 797</b>	<b>2</b>
<b>G — 796</b>	<b>2</b>
<b>G — 8</b>	<b>10</b>
<b>G — 9</b>	<b>4</b>

NO. 04-3452

SUPREME COURT  
OF THE UNITED STATES

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In Re: Evelyn L. Johnson,

Petitioner.

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MOTION FOR RELIEF

**I. DAMAGES<sup>1</sup>**

**A. Issuance of damage decisions.** Evelyn L. Johnson, Petitioner, moves the Court, to Grant her full relief. Petitioner presented specific and special request for damages. Petitioner had requested and presented objective evidence of the alleged damages incurred, which addressed

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<sup>1</sup> See attached hypothetical losses in TSP earnings. Losses were also incurred in other components of retirement such as retirement annuity through Federal Employees Retirement System (FERS), and Social Security. Due to the complexity of the retirement computations, which would be available through the Office of Personnel Management (OPM), Petitioner was unable to provide those hypothetical figures. A table of salary Petitioner compiled, which shows salary losses due to inappropriate personnel action(s) over the years, and a copy of employee statement from the National Finance Center, the independent agency responsible for managing federal employees' TSP component of employment retirement, are also attached. (The computations' sheets were clearer when they were typed on the standard size papers. Petitioner, however, did her best to format the calculations to substantiate the deficiencies on Petitioner's earnings.)

issues of full relief, compensatory and punitive damages, and any and all other equitable relief to which the Petitioner is legally entitled.

**B. Recent compelling facts, medical and emotional issues, and discussion**

1. Major physical and medical pain and suffering. On January 28, 2004, Petitioner underwent a major surgery due to the cyst on her right breast. Pathology findings reveal that the mass removed from the Petitioner's breast was positive for breast cancer. Petitioner underwent another surgery on February 9, 2004, removing several lymph nodes with malignant cells. After consultation with an oncologist on March 2, 2004, Petitioner's treatments were series of chemotherapy, which Petitioner is still undergoing, and to be followed by radiation procedures. Due to Petitioner's most recent health condition, Petitioner contends irreparable damage and heightened emotional trauma and mental anguish due to the unlawful loss of her health insurance coverage.<sup>2</sup>

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<sup>2</sup> Copy of "Notice of Insurance Coverage" from the health insurance provider.

**2. Major emotional pain and suffering and mental anguish.** Petitioner has dealt with horrendous ordeals with the employing office regarding this employment dispute for more than two years. Petitioner's life has never been the same since she filed the Equal Employment Opportunity/Employment Dispute Resolution (EEO/EDR) complaint on March 12, 2002. Petitioner incurred severe financial and economic loss, emotional pain and suffering, mounting legal costs, and other irreparable injury. Petitioner's loss of Federal Employees' Health Benefits (FEHB), as a result of employing office's unlawful actions, intensified Petitioner's damages and injury. Due to the recent changes and developments in the Petitioner's health, medical needs, and conditions, among other things, and with no income coming in, Petitioner faces financial and medical catastrophic expenses, stress, and mental anguish.

**C. Damages.** Subject to appropriation, back pay, full relief, and associated benefits pursuant to 5 U.S.C. § 5596.

**1. Irreparable injury.** Injury due to a continuing and intentional discrimination; retaliation, harassment,



creating a hostile work environment; and continuing harassment and retaliatory actions; retaliatory termination;

**2. Economic injury.** Violation of Equal Pay Act of the Fair Labor Standards Act, *29 U.S.C. § 216*. Recovery of back pay wages due to willful intentional discrimination;

**3. Involuntary (Immediate) Retirement.** Long-term economic effect on federal employment retirement and full benefits before reaching full retirement age under Federal Employment Retirement System (FERS);

**4. Mental anguish and emotional abuse and suffering.** Manifested in emotional stress, depression, digestive problems, high blood pressure, sleep disorder (narcolepsy), deep grief, distress and anxiety, and unlawful loss of Petitioner's Federal Employees Health Insurance Benefits (FEHB);

**5. Drug dependency.** Long-term affect of taking narcotics (stimulant) to control narcolepsy. These drugs stimulate the central nervous system and are used medicinally to combat depression and narcolepsy. Fatigue and depression follow prolonged uses;

**6. Double [treble] damages.** Intended in certain instances, as a kind of punishment for intentional improper behavior and willful misconduct;

**7. Exemplary [punitive] damages.** Punishment to the wrongdoer and excess enhancement to the injured due to "evil intent," "malice," and "reckless indifference;"

## **II. FULL RELIEF UNDER TITLE VII**

**A. Full relief under Title VII.** Prevailing party within the meaning of section 706(k) of Title VII, Civil Rights Act of 1964; 42 USC 2000e-5(k).

**1. Statement of relief or remedy sought.** *Title VII of the Civil Rights Act of 1964, Pub.L.No. 88-352 (July 2, 1964), and the Civil Rights Act of 1991, Pub.L.No. 102-166 (November 31, 1991), provide in pertinent part: "It shall be unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e et seq.*

As an aggrieved former employee within the meaning of Title VII, other activities protected under Title VII, ADEA, FMLA, Equal Pay Rights, and the EDR/EEO process which provide remedies regarding a term, condition, or privilege of employment and discussed at the various and numerous adverse employment actions directed to the Petitioner intentionally and on a continuing basis, several provisions of the Acts entitle the Petitioner to relief. Upon thorough examination of those adverse employment actions and because of the totality of the whole employment complaint, facts, oral, direct, and circumstantial evidence in support of all claims, Petitioner trusts that the Court would give full consideration in adjudicating the resolution of this conflict.

Equitable relief, as part of make whole relief, the anti discrimination statutes seek reimbursement for medical expenses for treatment of stress, medical conditions that are caused by the discrimination, ongoing hardships and problems suffered because of the cancellation of health benefits due to unlawful personnel action. EEOC v. Service News Co., 898 F.2d 958 (4<sup>th</sup> Cir. 1990).

2. **Title VII remedial relief jurisdiction.** The object of the remedial relief statute under Title VII is to put the victim of discrimination where he or she would have been but for the prohibited discrimination or to make the victim of discrimination whole. Relief for individual Petitioners is predicated upon a finding that the employee has been discriminated against and is entitled to relief. The Civil Rights Act of 1991 enhanced the remedies available to victims of intentional discrimination under Title VII. The 1991 civil rights legislation authorizes both punitive and compensatory damages. *Civil Rights Act of 1991 section 102(b); 42 USC 1981 a(b)*. Although the federal government is exempted from the provision authorizing punitive damages, when a Petitioner establishes that she meets the jurisdictional requirements of Title VII, she may recover for liquidated damages for willful violations.

3. **Elements of remedial relief.** Title VII or "make whole" statute, "As a general rule, when discrimination is found, the appropriate remedy to which the victim of discrimination is entitled is that remedy which, as nearly as possible, places him/her in the situation he/she would have

been had the discrimination not occurred." Albemarle Paper Co. v. Moody, 422 U.S. 405, 95 S.Ct. 2362, 45 L.Ed.2d 280 (1975). The object of the statute is not to punish the offending employer but to place the employee in the position he/she would have been in had there been no prohibited discrimination. Compensatory damages further the remedial purpose of the statute by allowing compensation for the injuries suffered by victims of discrimination, including compensation for emotional distress, pain, and suffering, and mental anguish.

Under the Civil Rights Act of 1991, Congress authorized awards of compensatory damages against the federal government under Title VII in cases involving intentional discrimination. The primary burden of the remedy must be borne by the employing agency. "[C]ongress added compensatory damages to federal EEO statutes in order to make perpetrators of intentional discrimination liable for non wage economic consequences of their acts, to the extent necessary to provide full relief to victims of discrimination. See 137 Cong.Rec. At S 15 , 484 (daily ed. Oct. 30, 1991). The U.S. Supreme Court in West v. Gibson,

527 U.S. 212, 119 S.Ct.1906, 144 L.Ed.2d 196 (1999), held that the EEOC has the authority to issue compensatory damage award against federal agencies in the administrative process. Federal employees proving intentional discrimination under Title VII are entitled to compensatory damages under the 1991 civil rights act. To deny compensatory damages award in the administrative process would undermine this remedial scheme.

**B. Appropriate equitable relief.** Claims by a federal government employee that civil service rights had been violated, Petitioner must meet two elements: 1) employee must make a showing of irreparable harm; 2) employee must demonstrate a strong likelihood of ultimate success on the merits of the case. *Fed.R.Civ.P. 65.*

**C. Enforcement of appropriate equitable relief.** "Equitable relief" has been held to include the restoration of lost benefits. Restoration of benefits, such as medical expenses, can be recovered as part of compensatory damages under Civil Rights Act of 1991. Title VII expressly authorizes reinstatement orders to remedy discrimination. EEOC and the courts can effectuate the purpose of Title VII



which is "to make the victims of unlawful discrimination whole." 42 USC 2000e-5(g)(1).

1. Petitioner brought the complaint under Title VII, Civil Rights Act of 1964, and remedial relief brought under 5 USC § 5596. While the Petitioner is no longer employed by the employing office (retaliatorily terminated although Petitioner qualifies for certain requirements under Federal Employees Retirement System (FERS) for involuntary immediate retirement), the concept of make-whole relief mandates that under Title VII relief provisions, Petitioner is entitled to reinstatement remedy and restoration of benefits because the unlawful action had unquestionably affected the circumstances of the matter.

2. Particular relief granted in any case is dependent upon the underlying personnel action(s), term, condition of employment that formed the basis of the complaint. Petitioner moves the Court to enforce appropriate equitable relief of entire federal employment discrimination complaint and enter full relief order.

Petitioner's original termination date was June 27, 2003, but then placed on leave-without-pay status, and



through the "actual" termination date of November 14, 2003, which caused the loss of the Petitioner's federal health insurance coverage.<sup>3</sup>

As part of compensatory damage awards under the Civil Rights Act of 1991, the "Act expressly authorizes an award of injunctive relief, reinstatement, and any other 'equitable relief' deemed appropriate." 42 USC § 2000e-5(g). "Such 'equitable relief' has been held to include the restoration of lost benefits, such as pension or fringe benefits, seniority, and other concomitants of employment which would have been earned absent discrimination." See, e.g., Walker v. Ford Motor Co., 1259, 1266 (11<sup>th</sup> Cir. 1982).

**3. Delay and resistance in resolving lawful federal employment issues by an aggrieved career-federal employee.** The employing office's delay constituted restraint and interference with Petitioner's right to pursue an EEO complaint. Further evidence of such interference by the employing office was its decision to attempt to restrain

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<sup>3</sup>Adverse personnel action of retaliatory termination, employing office's letter dated June 20, 2003.

the Petitioner from filing the instant complaint. Petitioner reasonably believed that the employing office's actions showed bad-faith intent, trickery, unlawful and questionable ethical conduct, which violated Petitioner's due process right, and were instigated, among other things, by high-ranking officials and justices of this court. <sup>4</sup>

### **III. RELIEF SOUGHT**

Petitioner asserts enforcement of rights on special damages pursuant to 42 USC § 2000e-5(a), (b), (f)(1)(A), (B)(2)(3), as specified below:

#### **A. Full relief under Title VII, Civil Rights Act of 1964.**

When an appropriate authority has determined that an employee was affected by an unjustified or unwarranted personnel action[s], the employee shall be entitled to back pay under section 5596 of Title 5, U.S. Code, and this subpart only if the appropriate authority finds that the unjustified or unwarranted personnel action[s] resulted in the withdrawal, reduction, or denial of all of part of the pay, allowances, and differentials otherwise due the employee.

*5 C.F.R. 550.804(a); 550.805.*

While the management engaged in grossly unprofessional and questionable ethical conduct, Petitioner

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<sup>4</sup> Manner in which the 2002 EDR complaint and 2003 adverse personnel action and EDR complaints were handled and processed. Orders from the 2002 EDR complaint and 2003 adverse action letters from the chief judge.

was subjected and had endured retaliatory actions such as intimidation and harassment creating a hostile work environment, and ultimately, retaliatorily terminated without good cause, and against her will. The Administrative Procedure Act authorizes courts to compel or set aside an agency action on a finding that the action was arbitrary and capricious, an abuse of discretion or otherwise not following the law. 5 U.S.C. § 706(2).

Petitioner meets certain requirements under the Discontinued Service Retirement (DSR), 5 U.S.C. §§ 8336(d)(1), 8414(b)(1), before becoming eligible for regular retirement. Petitioner had over 21 years of service with the federal government, will turn 53-year-old on October 23, 2004, and Petitioner meets the Discontinued Service Retirement (DSR) (or *Involuntary Immediate Retirement*), requirement under the Federal Employees Retirement System (FERS), of at least 50-year-old, with at least 20-year federal service. Petitioner's date of birth was 1951, and under FERS regulations, Petitioner will be eligible to retire when Petitioner meets her Minimum Retirement Age (MRA) of 55 years and 8 months and at least 20 years of service with the federal government. 5 U.S.C. § 8401 et seq.; 5 U.S.C. § 5596, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16.

Petitioner will meet her MRA requirement in two-and-one-half years (2 ½ ), by the end of 2006, but for the retaliatory termination, Petitioner sustains catastrophic financial loss. Petitioner requests to be placed on administrative leave rather than leave-without-pay, and retroactive from the time Petitioner was placed on leave-without-pay, through the resolution of the whole employment complaint.

The Court at National Railroad Passenger Corp. v. Morgan, \_\_\_\_ U.S. \_\_\_\_, 122 S.Ct. 2061, 153 L.Ed.2d 106 (2002) held:

A Title VII plaintiff raising claims of discrete discriminating acts must file his charge within the appropriate 180- or 300-day period, but a charge alleging a hostile work environment will not be time barred if all acts constituting the claim are part of the same unlawful practice and at least one act falls within the filing period—subsequent acts of hostile work environment may still be part of the one claim.

**B. Compensatory damages.** Available only in cases of intentional discrimination, under *Title VII and the Rehabilitation Act, Sec. 102, Civil Rights of 1991, codified at 42 U.S.C. § 1981a(b).*

[C]ongress added compensatory damages to federal EEO statutes in order to make the perpetrators of intentional employment discrimination liable for non-wage economic consequences of their acts, to the extent necessary to provide full relief to victims of discrimination. See 137 Cong. Rec. at S15,484 (daily ed. Oct. 30, 1991).

C. Back pay. Applies to a wide range of personnel actions such as failure to promote. Violation of Equal Pay Act of the Fair Labor Standards Act, 29 U.S.C. § 216. Recovery of back pay wages computed in the manner prescribed by 5 C.F.R. 550.805;

D. Other forms of relief. Front pay. Under § 706(g) of the Civil Rights Act of 1964 as originally enacted, when a court found that an employer had intentionally engaged in an unlawful employment practice, the court was authorized to "enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action, as may be appropriate . . . ." 42 U.S.C. § 2000e-5(g)(1). Front pay could be considered compensation for "future pecuniary losses."

In the Civil Rights Act of 1991, Congress determined that victims of employment discrimination were entitled to additional remedies. Congress expressly found that "additional remedies under Federal law are needed to deter unlawful harassment and intentional discrimination in the workplace," without giving any indication that it wished to curtail previously available remedies. See, Civil Rights Act of 1991, 105 Stat. 1071, 2. Congress therefore made clear through the plain language of the statute that the remedies

newly authorized under § 1981a were in addition to the relief authorized by § 706(g). Section 1981(a)(1) provides that, in intentional discrimination cases brought under Title VII, "the complaining party may recover compensatory and punitive damages as allowed in subsection (b) of [1981a], in addition to any other type of relief authorized under § 706(g) of the Civil Rights Act of 1964." According to these statutory provisions, if front pay were a type of relief authorized under § 706(g), it is excluded from the meaning of compensatory damages under § 1981a.

Front pay may be awarded in three (3) circumstances: 1) no position available; 2) antagonistic or hostile working environment; and 3) where the employer has historically resisted the anti discrimination statutes.

Front pay due to involuntary immediate retirement. Economic damage for not meeting the Minimum Retirement Age (MRA) under the Federal Employee Retirement System (FERS) regulations affecting basic retirement, Social Security component, and Thrift Savings Plan component of the full retirement benefits, health benefit (FEHB), and life insurance benefit (FELI).

Front pay is not an element of compensatory damages and may, in proper cases, be awarded in addition to compensatory damages. Pollard v. E.I. du Pont de Nemours

& Co., 121 S.Ct. 1946 (2001), cert. granted, 531 U.S. 1069 (2001).

**E. Terms and conditions of employment under Title VII.** "Employees psychological as well as economic fringes are statutorily entitled to protection from employer abuse and the phrase terms, conditions, and privileges of employment is an expansive concept which sweeps within the protective ambit of Title VII." 42 U.S.C. § 2000e-2(a)(1).

1. **Promotion to CL 30/** (including steps adjustments), and retirement should be based on high-three annual salary, which should be based on CL 30 grade. The Staff Attorneys' Office official intentionally and maliciously manipulated prohibited personnel practice by placing a CL 30, white/female employee and a CL 25 black/female employee to do the job Petitioner singlehandedly performed for over three years without added compensation. Said employees never had any experience in federal government personnel administration. Said official ordered Petitioner to train both employees on every detail of Petitioner's duties and responsibilities, then retaliatorily fired the Petitioner when she filed a discrimination complaint.

2. **Pay steps.** Employee is entitled to move up the individual steps of a pay scale and should be included in



calculations, and must advise Petitioner of the specific basis for its calculations;

**3. Thrift Savings Plan (TSP).** TSP automatic contributions are deducted from paychecks. When a discriminatory action eliminates or reduces those contributions, make whole relief includes not only the contributions themselves, but the interest that would have been earned but for the discriminatory action. Must reimburse the agency matching funds contributed, automatic agency contribution during the back pay period, deducted amounts for employee contribution to TSP account, but had not, as part of the back pay award, deposited funds into account representing the additional matching contribution the agency would have made to Petitioner's account during the back pay period if Petitioner had received the promotion(s) in question and had been contributing to TSP based on the higher salary level of that position. (Apply to both back and front pay damages);

**4. Retirement computations on FERS, Social Security, and TSP** which would be subject to actuarial computations should include clear and specific language submitted to the AO, with provisions of acceptance and will not be binding until approval from the Office of the

Personnel Management (OPM), the authorizing federal agency for retiring federal government employees;

**5. Retirement fund as a component of salary.**

Employee is entitled to have retirement benefits adjusted as part of the back pay award, including receiving the earnings which the account would have accrued during the relevant period. Employer shall then pay into Petitioner's TSP, Retirement, and Social Security accounts all amounts owed. All calculations shall be fully explained and provided to Petitioner, with supporting, patently clear, and precise documentation;

**6. Adjustment of retirement benefits.** Employer shall initiate all appropriate correspondence and paperwork for Office of Personnel Management (OPM) to make adjustment of retirement benefits. ONLY approval of OPM after adjustment of retirement benefits shall Involuntary Immediate Retirement becomes binding;

**7. Tax consequences of back pay, front pay, and compensatory damages.** Recent reversal court decisions have held that agencies are liable to the complainant for the additional tax liability that results from the one-time payment. The effect on the income tax bracket of the complainant because IRS taxes income in the year it is received without regard to the fact that money is

remuneration that should have been received in past tax years. Since taxes are paid to the IRS the year the compensation is received, the amounts of money should be adjusted to compensate for taxes and not become a tax burden;

**8. Federal retirement benefits are subject to different federal statutes.** Actuary adjustments must include full benefits on FERS, SS, TSP, FEHB, & FEGLI, from the onset of the adverse employment action through the actual grade on retirement;

**9. FERCCA - Federal Erroneous Retirement Correction Act.** OPM determined that Petitioner was placed on the wrong retirement system when she returned to work to the federal government. Petitioner's decision of correcting her placement in the correct retirement system will not be determined until after contact by an OPM counselor. This Act will not have a bearing on Petitioner's decision when placed on involuntary immediate retirement.

**10. Restoration of benefits.** Because a victim of discrimination is entitled to be made whole, this extends to the restoration of benefits such as sick and annual leave. A claim of restoration of leave hours which were taken because of discriminatory actions have been determined to be a

request for equitable relief damages which were awarded under Title VII;

The restoration of leave is equivalent to an award of lost benefits or other concomitant of employment which would have been earned, retained, or accrued absent the alleged discrimination. See, e.g., Walker v. Ford Motor Co., 29 FEP cases 1259 at 1266 (11<sup>th</sup> Cir. 1982). Accordingly, if leave were taken in order to avoid or recover from discriminatory harassment, such leave must be treated as excused and administrative leave in order to make the Petitioner whole and place her in the position she would have been in absent discrimination;

**11. Leave petitioner used in 2002 was excessive,** and would not have taken them if not for the adverse employment actions Petitioner was subjected to, filing of the claims, and retaliatory actions. Payment for Petitioner's leave usage from the time she filed the claims through the resolution date of retirement;

**12. Retroactive compensation for the period from the denial of the promotion to retirement,** as well as an adjustment of retirement benefits to reflect any increase Petitioner would have earned;

**13. Past pecuniary losses and non pecuniary damages.** Include all of the intangible harm a complainant

suffers as a result of discrimination, emotional distress, pain and suffering, visits to health care providers, medications, leave, medical expenses;

14. All attorneys' and filing fees, court costs, and other related expenses related to the whole complaint;

15. Expunction of employing office's adverse personnel record of the Petitioner or any adverse material relating to the whole complaint;

16. Notification to all Staff Attorneys' Office employees that Petitioner was not fired due to a mental condition, performance-related issues, and character deficiencies, and order an independent party to conduct an investigation concerning personnel management in the SAO.

Respectfully submitted,

---

Date

---

Evelyn L. Johnson  
Pro Se Petitioner  
6241 S. Skyline Drive  
Douglasville, GA 30135  
(770) 489-0343

Attachments

**APPENDIX — 12-A**

**NOTE:** Pursuant to Fed. Cir. 47.6, this order is not citable as precedent. It is a public order.

**United States Court of Appeals  
for the Federal Circuit**

04-3452

**EVELYN L. JOHNSON**

Petitioner,

v.

**MERIT SYSTEMS PROTECTION BOARD,**

Respondent.

**ON MOTION**

Before GAJARSA, Circuit Judge.

**ORDER**

Evelyn L. Johnson submits 12 copies of her brief, one copy of a multi-volume appendix, and a "motion for relief," which the court treats as a motion for leave to file a supplement to her brief, with supplement attached. The court considers whether the caption should be reformed to designate the Merit Systems Protection Board as respondent in place of the Administrative Offices of the U. S. Courts

## APPENDIX — 12-A

(AO) and whether the requirements of Fed. Cir.R.30(a)(5) should be waived to allow Johnson to file fewer than 12 copies of her appendix with the court.

Pursuant to 5 U.S.C. § 7703(a)(2), the Board is designated as the respondent when the Board's decision concerns solely the procedure or jurisdiction of the Board. See Spruill v. Merit Sys. Protection Bd., 978 F.2d 679, 686 (Fed. Cir. 1992). The employing agency is designated as the respondent when the Board reaches the merits of the underlying case. Id.

Johnson appealed her termination from the position of human resources coordinator for the Office of the Senior Staff Attorney of the United States Court of Appeals for the Eleventh Circuit. The Board issued a final decision dismissing Johnson's appeal for lack of jurisdiction, concluding that Johnson was an employee of the judicial branch lacking Board appeal rights under 5 U.S.C. § 7511(a).

Because the Board's ruling was limited to a jurisdictional determination and did not address the underlying merits pertaining to Johnson's



APPENDIX — 12-A

termination, the Board is the proper respondent in this petition for review. See Spruill, 978 F.2d at 686.

Accordingly,

IT IS ORDERED THAT:

(1) The motion for leave to supplement the brief is granted.

(2) The revised official caption is reflected above.

(3) The AO is directed to promptly transmit to the Board copies of all documents that Johnson served on it and all documents that the AO filed with the court.

(4) Upon receipt by the clerk's office of three more complete copies of Johnson's appendix, the court will file Johnson's brief, supplement to the brief, and appendix.

(5) The Board's brief, either formal or informal, is due within 40 days of the date of filing of this order.

Nov - 8 2004

Date

/s/ Arthur J. Gajarsa

Arthur J. Gajarsa  
Circuit Judge

cc: Evelyn L. Johnson  
Phyllis Jo Baunach, Esq  
Lynn Jennings, Esq.

Filed  
U.S. Court of Appeals  
for the Federal Circuit

Nov - 8 2004

04-3452

/s/ Jan Horbaly, Clerk

# APPENDIX — 1-G

TSP ACTUAL EARNINGS		
[COMPARE WITH PAGE 2]		
Note: Discrepancy in pay/promotions began in 1996.		
Therefore, the TSP balance is correct until 4/30/1996		
4/30/1996 Balance — \$21, 320.29		
DATE	BALANCE	CONTRIBUTION
5/1/96-10/31/96	21,320.29	2,337.96
11/1/96-4/30/97	25,357.15	2,469.00
5/1/97-10/31/97	30,597.95	2,723.04
11/1/97-4/30/98	37,023.98	2,623.80
5/1/98-10/31/98	45,926.77	2,667.00
11/1/98-4/30/99	49,072.66	2,749.56
5/1/99-10/31/99	60,000.88	2,802.36
11/1/99-4/30/00	64,301.84	2,911.80
5/1/00-10/31/00	71,109.77	2,980.80
11/1/00-4/30/01	74,257.28	3,074.88
5/1/01-10/31/01	71,354.68	3,263.78
11/1/01-4/30/02	67,899.39	3,798.35

# APPENDIX — 1-G

TSP ACTUAL EARNINGS		
[COMPARE WITH PAGE 1]		
Note: Discrepancy in pay/promotions began in 1996.		
Therefore, the TSP balance is correct until 4/30/1996		
4/30/1996 Balance — \$21, 320.29		
%		EARNING %
CONTRIBUTION	EARNINGS	FOR PERIOD
15%	\$1,698.90	7.181%
15%	\$2,771.80	9.961%
15%	\$3,702.99	11.113%
15%	\$6,278.49	15.836%
15%	\$479.39	0.987%
15%	\$8,178.66	15.782%
15%	\$1,498.60	2.386%
15%	\$3,896.13	5.797%
15%	\$166.71	0.225%
15%	\$(5,977.48)	-7.730%
16%	\$(6,728.07)	-9.017%
17%	\$6,375.14	8.893%

4/30/2002 Balance = \$78,063.88

## APPENDIX — 1-G

### Notes:

1. 11% Contribution began on 7/31/2001.
2. 12 % Contribution began on 7/31/2002.
3. % Contribution includes FERS match of 5 %.
4. **BALANCE, CONTRIBUTION, and EARNINGS** were obtained from the semi-annual TSP reports which are included as an Exhibit.
5. **EARNING % FOR PERIOD** was calculated using the following formula:

$$\text{EARNING} / (\text{BALANCE} + \text{CONTRIBUTION}).$$

## APPENDIX — 2-G

### TSP "SHOULD BE" EARNINGS

[All pages on Appendix—2-G should be compared  
together]

Note: Discrepancy in pay/promotions began in 1996.  
Therefore, the TSP balance is correct until 4/30/1996.  
4/30/1996 Balance = \$ 21, 320.29

DATE	BEGIN BALANCE	SHOULD BE SALARY
5/1/96-7/21/96	\$21,320.29	\$30,398.00
7/22/96-10/31/96		\$32,637.00
11/1/96-1/5/97	\$25,355.57	\$32,637.00
1/6/97-4/30/97		\$34,699.00
5/1/97-10/31/97	\$30,638.73	\$34,699.00
11/1/97-1/4/98	\$36,979.76	\$34,699.00
1/5/98-4/30/98		\$36,855.00
5/1/98-10/31/98	\$45,948.13	\$36,855.00
11/1/98-1/3/99	\$49,214.29	\$36,855.00
1/4/99-4/30/99		\$39,253.00
5/1/99-7/3/99	\$60,317.97	\$39,253.00
7/4/99-10/31/99		\$40,598.00
11/1/99-1/2/00	\$64,838.90	\$40,598.00
1/3/00-4/30/00		\$43,939.00

## APPENDIX — 2-G

### TSP "SHOULD BE" EARNINGS

[All pages on Appendix—2-G should be  
compared together]

Note: Discrepancy in pay/promotions began  
in 1996. Therefore, the TSP balance is  
correct until 4/30/1996.

4/30/1996 Balance = \$ 21, 320.29

Work Days	% Contribution	Contribution
57	15%	\$ 999.63
71	15%	\$1,336.86
46	15%	\$ 866.14
82	15%	\$1,641.53
132	15%	\$2,642.46
45	15%	\$ 900.84
84	15%	\$1,706.05
131	15%	\$2,785.39
45	15%	\$ 956.81
85	15%	\$1,924.91
45	15%	\$1,019.07
85	15%	\$1,990.83
45	15%	\$1,053.99
85	15%	\$2,154.70

# APPENDIX — 2-G

<b>TSP "SHOULD BE" EARNINGS</b> [All pages on Appendix—2-G should be compared together]		
Note: Discrepancy in pay/promotions began in 1996. Therefore, the TSP balance is correct until 4/30/1996. 4/30/1996 Balance = \$ 21, 320.29		
EARNING % FOR PERIOD	EARNINGS	SHOULD BE BALANCE
7.181%	\$1,698.79	\$25,355.57
9.961%	\$2,775.49	\$30,638.73
11.113%	\$3,698.57	\$36,979.76
15.836%	\$6,281.48	\$45,948.13
0.987%	\$ 480.77	\$49,214.29
15.782%	\$8,221.96	\$60,317.97
2.386%	\$1,511.00	\$64,838.90
5.797%	\$3,944.47	\$71,992.06



## APPENDIX — 2-G

### TSP "SHOULD BE" EARNINGS

**Notes:**

1 The TSP account is updated every six months in cycles from 5/1 through 10/31 and 11/1 through 4/30. However, promotions generally in July [due to the fact that last promotion should have effected the month of July]. Therefore, the TSP period had to be further divided to reflect different contribution amount for the different salaries within the 6 month period.

2 The % CONTRIBUTION includes the 5% matching percentage,

3 The CONTRIBUTION was determined by the following formula: (SHOULD BE SALARY/260 WORK DAYS PER YEAR) X (ACTUAL DAYS WORKED DURING PERIOD) X (% OF SALARY)

4 The EARNING % FOR PERIOD is the same percentage that was calculated on the actual performance of the portfolio as shown on the TSP ACTUAL spreadsheet.

5 The SHOULD BE BALANCE is the sum of the BEGINNING BALANCE, CONTRIBUTION, and EARNINGS.

6 The BEGINNING BALANCE = SHOULD BE BALANCE for the previous period.

# APPENDIX — 3-G

TSP AVERAGE EARNINGS				
Date	Balance	Contri- bution	Earnings	Earning for Period
5/1/89 - 10/31/89	\$138.92	\$96.46	\$7.80	3.314 %
11/1/89 - 4/30/90	\$243.18	\$257.50	\$12.53	2.53 %
5/1/90 - 10/31/90				
11/1/90 - 4/30/91	\$1,330.55	\$806.10	\$70.15	3.283 %
5/1/91 - 10/31/91	\$2,206.80	\$834.21	\$105.54	3.471%
11/1/91 - 4/30/92	\$3,416.55	\$864.87	\$73.33	1.713 %
5/1/92 - 10/31/92	\$4,084.75	\$894.79	\$134.34	2.698 %
11/1/92 - 4/30/93	\$5,113.88	\$902.35	\$276.56	4.597 %
5/1/93 - 10/31/93	\$6,292.79	\$1,141.54	\$405.81	5.459 %
11/1/93 - 4/30/94	\$7,840.14	\$1,42.72	\$(146.02)	-1.590 %

**APPENDIX — 3-G**

<b>TSP AVERAGE EARNINGS</b>				
<b>Date</b>	<b>Balance</b>	<b>Contri- bution</b>	<b>Earnings</b>	<b>Earning for Period</b>
5/1/94 - 10/31/94	\$9,036.84	\$1,363.44	\$450.38	4.330 %
11/1-94 - 4/30/95	\$10,850.66	\$1,752.43	\$1024..61	8.130 %
5/1/95 - 10/31/95	\$13,627.70	\$2,145.55	\$1599.65	10.142 %
11/1/95 - 4/30/96	\$17,372.90	\$2,247.48	\$1699.91	8.664 %
5/1/96 - 10/31/96	\$21,320.29	\$2,337.96	\$1698.90	7.181 %
11/1/96 - 4/30/97	\$25,357.15	\$469.00	\$2771.80	9.961 %
5/1/97 - 10/31/97	\$30,597.95	\$2,723.04	\$3702.99	11.113 %

**Average Return 4.725 % (from 5/89 through 4/30/02)**

●APPENDIX — 4-G

TSP ON-LINE CALCULATIONS

CALCULATORS

Annuity Estimate Results

**YOUR ANNUITY ESTIMATE** is based on the following information:

You chose: Annuity option 1b (Single Life Annuity, level payments, cash refund)

You estimated your TSP account balance at **\$78,063**

When you are age: **51**

Your estimated monthly annuity payments are **\$440**  
based on an annuity interest rate index of 4.625%

Change options in Above Annuity   Start Over

NOTES:

● This calculator uses the most recent annuity interest rate index for estimating an annuity. These results are estimates and are rounded to whole dollars. Actual annuity payments will vary depending on the annuity interest rate index and the terms of the TSP annuity vendor's contract in effect at the time your annuity is purchased.

● Spouses' rights apply to TSP annuities.

● If you or your joint annuitant's age is not covered by this calculator, or if the age difference between you and your joint annuitant is more than 10 years, you can use the Worksheet

## ● APPENDIX — 4-G

for Estimating a Monthly Annuity Payment on page 9 of the booklet Thrift Savings Plan Annuities. The factors you will need to use for the Worksheet are available from your agency personnel office.

---

### TSP ON-LINE CALCULATIONS [Calculation figures as of 9/23/2002]

#### CALCULATORS

#### Annuity Estimate Results

**YOUR ANNUITY ESTIMATE** is based on the following information:

You chose: Annuity Option 1b (Single Life Annuity, level payments, cash refund)

You estimated your TSP account balance at \$200,117

When you are age: 56

Your estimated monthly annuity payments are **\$1,199** based on an annuity interest rate index of 4.625%

#### NOTES:

● This calculator uses the most recent annuity interest rate index for estimating an annuity. These results are estimates and are rounded to whole dollars. Actual annuity payments will vary depending on the annuity interest rate index and the terms of the TSP annuity vendor's contract in effect at the time your annuity is purchased.

● Spouses' rights apply to TSP annuities.

● If you or your joint annuitant's age is not covered by this calculator, or if the age difference between you and your joint annuitant is more than 10 years, you can use the Worksheet for Estimating a Monthly Annuity Payment on page 9 of the

## ●APPENDIX — 4-G

booklet Thrift Savings Plan Annuities. The factors you will need to use for the Worksheet are available from your agency personnel office.

---

### **TSP ON-LINE CALCULATIONS** [Calculation figures as of 9/23/2002]

**CALCULATORS**    **Projecting Your Account Balance:**  
**Results Page**

#### **Annuity Estimate Results**

Growth of your future  
contributions and earnings    **\$ 71,680**

**Plus**

Growth of your existing  
account balance                    **\$128,437**

**Equals**

Total estimated TSP  
account balance                    **\$200,117**

The results above are based on the data you entered, as shown in the following tables. If you want to change any factor, scroll down to the table, backspace, or delete that figure completely, and put in your new figure. Then, scroll down and click the **RE-CALCULATE** button.

<b>GROWTH OF YOUR FUTURE CONTRIBUTIONS AND EARNINGS</b>
Your retirement system: <input checked="" type="radio"/> <b>FERS*</b> <input type="radio"/> <b>CSRS</b> <input type="radio"/> <b>Uniform Services</b>



## ●APPENDIX — 4-G

Enter a whole percentage** that you wish to save: $\div 12$ from your annual pay of: $\div \$65195$
Enter the number of years you plan to contribute: 5
Enter (as a whole percent) the annual rate of return you expect your investment to earn: 10%
The result is \$71,680
<b>Growth of Your Existing Account</b>
Enter the amount you already have in your TSP account: \$78,063
Enter the number of years that you expect to leave that money in the TSP: 5
Enter (as a whole percent) the annual rate of return you expect your account to earn: 10%
The result is \$128, 437

### RE-CALCULATE

\* You may begin contributing to the TSP (through payroll contributions) when you are hired. However, agency contributions for New FERS employees do not begin until the second open season after your FERS appointment begins. (For more information on eligibility for agency or service contributions, see "Participating in the TSP" in Features (for civilians or uniformed services).

\*\* Subject to the employee contribution limits below, the maximum amount of your own basic pay that you can contribute to the TSP is limited by the IRS. Do not enter a percentage that will result in an amount exceeding annual limit. TSP employee contribution limits and IRS limits will increase each year as follows:



●APPENDIX — 4-G

**TSP Contribution Limits**

	<b>FERS Limit</b>	<b>CSRS Limit</b>
Up to Dec 2002	12%	7%
Beginning Dec 2002	13%	8%
Beginning Dec 2003	14%	9%
Beginning Dec 2004	15%	9%
Beginning Dec 2005	<< TSP limits eliminated>>	

**TSP Contribution Limits**

	<b>Uniformed Services</b>	<b>IRS Limit</b>
Up to Dec 2002	7%	2002 \$11,000
Beginning Dec 2002	8%	2003 \$12,000
Beginning Dec 2003	9%	2004 \$13,000
Beginning Dec 2004	9%	2005 \$14,000
Beginning Dec 2005	<< TSP limits eliminated>>	

**TSP ON-LINE CALCULATIONS**  
[Calculation figures as of 9/23/2002]  
**Rates of Return**

**Historical Rates**

## ●APPENDIX — 4-G

### G, F, C, and I Fund Rates of Return 1988 - 2001

Except as otherwise described with respect to periods before implementation of the S & I Funds, the monthly G, F, C, S, and I Fund returns shown represent the actual total rates of return used in the monthly allocation of earnings to participant accounts. The returns are shown after deduction of accrued TSP administrative expenses. The F, C, S, and I Fund returns also reflect the deduction of trading costs and accrued investment management fees.

#### 10-Year Summary of TSP Annual Returns Graph                      Table

#### 10-Year Compound Annual Returns for Related Securities

Monthly	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>
Returns	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>2000</u>	<u>2001</u>			

10-Year Summary of TSP Annual Returns					
YEAR	G Fund	F Fund	C Fund	S Fund	I Fund*
1992	7.23%	7.20%	7.70%	11.87%	-12.22%
1993	6.14%	9.52%	10.13%	14.57%	32.68%
1994	7.22%	- 2.96%	1.33%	- 2.66%	7.75%
1995	7.03%	18.31%	37.41%	33.48%	11.27%
1996	6.76%	3.66%	22.85%	17.18%	6.14%
1997	6.77%	9.60%	33.17%	25.69%	1.55%
1998	5.74%	8.70%	28.44%	8.63%	20.09%
1999	5.99%	- 0.85%	20.95%	35.49%	26.72%

## ●APPENDIX — 4-G

2000	6.42%	11.67%	-9.14%	-15.77%	-14.17%
2001	5.33%	8.61%	-11.94%	9.04%	-21.94%
10-Year Compound	6.47%	7.19%	12.88%	10.71%	4.38%

\* The returns shown reflect the actual performance of the S and I Funds for May 2001 and subsequent months. For the first four months of 2001 and for prior years, the S and I Fund returns shown reflect the performance to the Wilshire 4500 and EAFE Indexes (without deduction of any administrative expenses, trading costs, or investment management fees), respectively.

### TSP ON-LINE CALCULATIONS [Calculation figures as of 9/23/2002]

10-Year Compound Annual Returns for G Fund Related Securities, S&P 500 Index, LBA Index, Willshire 4500 Index and EAFE Index. (The figures for each year represent the compound annual returns for that year and the preceding 9 years.)

YEAR	G Fund <u>1</u>	F Fund <u>2</u>	C Fund <u>3</u>	S Fund <u>4</u>	I Fund <u>5</u>
1992	9.57%	11.71%	16.15%	13.72%	16.77%
1993	9.03%	11.85%	14.93%	12.76%	17.59%
1994	8.45%	9.96%	14.40%	12.65%	17.63%
1995	8.03%	9.63%	14.87%	12.77%	13.71%
1996	7.88%	8.47%	15.29%	13.31%	8.64%
1997	7.69%	9.18%	18.05%	16.34%	6.21%
1998	7.35%	9.26%	19.21%	15.14%	5.51%
1999	7.05%	7.69%	18.21%	16.17%	6.98%
2000	6.80%	7.96%	17.46%	15.87%	8.23%
2001	6.51%	7.23%	12.94%	10.67%	4.44%

## ●APPENDIX — 4-G

- 1 Calculated by the Board.
- 2 Lehman Brothers U. S. aggregate bond index is calculated by Lehman Brothers. The F Fund tracks the LBA index.
- 3 Standard & Poor's 500 stock index is calculated by Standard & Poor's Corporation. The C Fund tracks the S&P 500 index.
- 4 The Wilshire 4500 Index is calculated by Wilshire Associates. The S Fund tracks the Wilshire 4500 index.
- 5 The EAFE index is calculated by Morgan Stanley International. The I Fund tracks the EAFE index.

### Benefits

Report 09/23/2002

12:28:32 AM

### Input Data Summary

#### Employee

Date of Birth: 10/23/1951

#### Employment

Retirement Service

Computation Date: 07/08/1982

Current Retirement System: FERS

Current Annual Salary: \$65,195

#### Retirement

Expected Separation Date: 09/30/2007

Projected High-3

Average Salary: \$80,000

Survivor Benefit Election: None

Projected Sick Leave Balance: 0

#### TSP

Current	C Fund	F Fund	G Fund	I Fund	S Fund
Balance:	\$36,853	\$0	\$0	\$0	\$39,973

## ●APPENDIX — 4-G

Contribution					
Allocation	50%	0%	0%	0%	%50
Rate of Return	10%	7.5%	6.5%	9%	10%

Survivor Election made. Survivor is 15 years older. TSP  
Annuity is inflation Protected  
Contribution Rate: 12%

### **Social Security**

Social Security Credits: 68  
Most recent 12- month Salary: \$83,208

### **Economic Assumptions**

Inflation Rate: 0%

### **Computed Data Summary**

Annuity Start Date: 10/01/2007  
Annuity Start Age: 55 years  
11 months

### **Annuity Estimate**

### **Early Retirement-immediate Annuity**

<u>Monthly</u>	<u>Annually</u>	<u>Description</u>
\$1,678	\$20,133	FERS Base Annuity

### **Retirement Benefits Projection (Inflation Adjusted)**

In addition to your retirement annuity, other annuity benefits were added and adjusted for inflation to give a better picture of your annual purchasing power during your retirement years. For example, CSRS and Social Security benefits are fully indexed for inflation while a FERS annuity and your TSP benefits are not (See the "Explanation of

## ●APPENDIX — 4-G

Retirement Benefits Projection" for more information about inflation and cost of living adjustments.)

	Age 56 10/2007	Age 62 11/2013	Age 72 11/2023	Age 82 11/2033
FERS Annuity	\$20,124	\$20,124	\$20,124	\$20,124
FERS Supplement*	\$7,308			
Social Security*		\$14,162	\$14,162	\$14,162
TSP Annuity	12,840	\$15,454	\$20,957	\$29,419
Net Annuity	\$40,272	\$49,740	\$55,243	\$62,705

### Thrift Savings Plan

TSP Annuity based on estimated lump sum at retirement of:

\$209,957 (Adjusted for inflation)

\$209,957 (stated in year 2007 dollars)

\* Social Security and/or FERS Supplement Annuity amount may be reduced based on Earnings Test (see Explanation of Benefits).

### Explanation of the Retirement Benefits Projection

It is important to see how inflation affects your retirement benefits over your retirement years. For this reason, estimated retirement benefits are presented for:

1. Your first year of retirement
2. The age at which you begin receiving your Social Security benefits (if eligible)

## ● APPENDIX — 4-G

### 3. Ten-year intervals following the start of your Social Security benefits.

CS&S annuities and Social Security do not show a loss in purchasing power because each of these benefits receive an annual adjustment fully indexed to inflation. A FERS annuity shows a loss in purchasing power because it is not fully protected against inflation. Regular FERS retirees receive no annual cost-of-living adjustment until they reach age 62. Law enforcement/firefighter FERS retirees receive inflation adjustments immediately. The FERS cost-of-living adjustment is:

- The Consumer Price Index (CPI) minus 1% if the CPI is 3% or more
- 2% if the CPI is between 2% and 3%
- The full CPI if the CPI is 2% or less.

Note that Social Security Benefits will reflect the Windfall Elimination Provision where applicable.

For FERS Employees, the Benefits Report also shows the FERS Supplement which is a special retirement supplement for employees who retire under FERS prior to reaching age 62. This supplement is designed to approximate an employee's Social Security benefit earned while a federal employee and to compensate the employee until Social Security benefits begin. FERS employees must meet the age and service requirements needed to retire with an immediate annuity to be eligible for the supplement. Retirees separated involuntarily before reaching their minimum retirement age become eligible for the supplement. Retirees separated involuntarily before reaching their minimum retirement age become eligible for the supplement once they reach their



## ●APPENDIX — 4-G

minimum retirement age. Law enforcement/firefighters receive the FERS supplement at retirement regardless of age.

The FERS supplement is subject to an earnings test, similar to the test used for Social Security below the age of 65, that reduces the supplement by half the retiree's earned income above an annual exempt amount (except for law enforcement/firefighters less than the minimum retirement age). An earnings test can potentially reduce your Social Security benefit (including any spousal benefit) and your FERS supplement. The test is applied as follows: In 2002, if under age 65, the first \$11,280 is exempt from the earnings test. From age 65 to the Social Security normal retirement age (SSNRA), the first \$30,000 is exempt. Those over SSNRA have no earnings test. Earned income over these limits reduces the Social Security or FERS supplement benefit - under age 65, the benefit is reduced by \$1 for every \$2 over the limit; between age 65 and SSNRA, the reduction is \$1 for every \$3 over the limit.

The Benefits Projection report also shows how inflation may affect the purchasing power of your TSP benefit over your lifetime. It shows the estimated value of a level annuity payment that will gradually lose purchasing power because of inflation. You are also able to elect increasing annuity payments that start out lower but are indexed during retirement for inflation of up to 3% per year. The report also projects the estimated lump sum value of your TSP account in this year's dollars.

**APPENDIX — 5-G**

**THRIFT SAVINGS PLAN**

National Finance Center

P. O. Box 61500, New Orleans, LA 70161-1500

**EVELYN L. JOHNSON**

**SSN:**

**6241 S. SKYLINE DRIVE**

**DOUGLASVILLE, GA 30135**

**12/15/2003**

**Dear Participant:**

Thrift Savings Plan (TSP) records show that you are no longer employed by the Federal Government. This letter explains your withdrawal options. Be sure to read the second page of this notice to learn about the choices available to you and the restrictions on leaving your money in the TSP.

You cannot withdraw your account if you did not separate from Federal service or you separated but your separation from Federal service lasts less than 31 full calendar days. Once you are rehired, you cannot receive a post-separation withdrawal.

**Account Information.** Review the account information listed below. If you believe that any of this information is incorrect, contact the TSP Service Office for instructions to correct it.

**Social Security Number:**

**Date of Birth: 10/23/1951**

**Retirement Coverage: FERS**

**Separation Date: 11/14/2003**

**TSP-SCD: 01/01/1984**

**Total Service Required for Vesting: 3 Years**

**Vested: Yes**

**Vested Account Balance as of 12/15/2003: \$81,628.19**

**/separation Based on Disability: No**

**Note to FERS Participants:** Your separation date, the TSP Service Computation (TSP-SCD), and the service required for

## APPENDIX — 5-G

vesting are used to determine if you are vested in the Agency Automatic (1%) Contributions (and their earnings). If you are not vested in this amount, you are not entitled to it, and it is excluded from the vested account balance.

**Withdrawal Request.** As a separated participant, you can withdraw all or part of your account as described below:

**Partial withdrawals:** If you want to withdraw a portion of your account and you have not previously taken an age-based or partial withdrawal, you can withdraw a portion of your account in a single payment. Partial withdrawal requests must be at least \$1,000. If you would like to take a partial withdrawal, complete Form TSP-77, Request for Partial Withdrawal When Separated.

**Full withdrawal:** If you want to withdraw your entire account, you can elect a single payment, a series of monthly payments, or an annuity (available only for minimum amount of \$3,500) You can also withdraw your account using any combination of these options (i.e., mixed withdrawal). For a full withdrawal, complete Form TSP-70, Request for Full Withdrawal.

**Note to participants with a civilian and a uniformed services TSP account.** If you have an open uniformed services account, you can combine your civilian and uniformed services accounts. Use Form TSP-65, Request to Combine Uniformed Services and Civilian TSP Accounts, to combine your TSP accounts. The form provides rules and information about this feature.

**Spousal Rights.** If you are a CSRS participant, the TSP must notify your spouse of any partial withdrawal or a full withdrawal of more than \$3,500. If you are a FERS participant, your spouse must consent to any partial withdrawal from your account. For a full withdrawal of your account (if more than \$3,500) your spouse (including a separated spouse) has the right to a joint and survivor

## APPENDIX — 5-G

annuity with a 50 percent survivor benefit, level payments, and no cash refund feature, unless your spouse waives his or her right to that annuity. If you choose a mixed withdrawal, your spouse must waive his or her right to the annuity described above, even if you choose that annuity as part of your mixed withdrawal. Your spouse must consent to your partial withdrawal or waive his or her right to the prescribed annuity by signing the appropriate withdrawal form. Your spouse's signature must be notarized.

**Withdrawal Deadline.** Do not submit your withdrawal request until you are ready to withdraw, but no later than March 31 of the year following the year in which you become age 70½. If you are 70½ or older this year, you must submit your withdrawal election by March of next year.

**Important Tax Information.** A TSP payment issued directly to you, or to your checking or savings account by direct deposit, is considered income for Federal tax purposes in the year in which it is paid. See the enclosed tax notice for detailed tax information.

**Additional Information.** Read the booklet *Withdrawing Your TSP Account After Leaving Federal Service*. You can obtain a copy from the TSP Web site at [www.tsp.gov](http://www.tsp.gov), your former agency personnel office, or the TSP Service Office. Use the enclosed Form TSP-72 to request materials from the TSP Service Office.

If your address is not correct, complete and return the enclosed Form TSP-9, *Change of Address for Separated Participant*, or update your address on the TSP web site. Materials mailed to an incorrect address may not reach you. If you submit a withdrawal request to the TSP, your address shown on the withdrawal form will be sufficient.

If you have questions, contact the TSP Service Office at the address on the letterhead or call the ThriftLine at (504) 255-8577 (TDD: (504) 255-5113) and wait for the option

## **APPENDIX — 5-G**

on the menu which allows you to speak to a participant service representative. The operating hours are Monday through Friday between 7:00 a.m. and 4p.m. central time. Please include your daytime telephone number and your Social Security number on all correspondence to the TSP Service Office.

Enclosures: Form TSP-9, Change of Address for Separated Participant

Form TSP-70, Request for Full Withdrawal

Form TSP-72, Request for TSP Materials

Form TSP-77, Request for a Partial Withdrawal When Separated

Important Tax Information About Payments from Your TSP Account

Notice: WC2011

APPENDIX — 6-G

**BLUE CROSS ®**  
**BLUE SHIELD ®**

Rec'd  
1/03/2004

**Federal Employee Program**

Evelyn L. Johnson  
6241 S Skyline Dr.  
Douglasville, GA 30135-3951

December 29, 2003

**DISCLOSURE OF COVERAGE**

\* \* \* \*

Important - This certificate provides evidence of your prior health coverage. You may need to furnish this certificate if you become eligible under a group health plan that excludes coverage for certain medical conditions that you have before you enroll. This certificate may need to be provided if medical advice, diagnosis, care or treatment was recommended or received for the condition within the 6-month period prior to your enrollment in the new plan. If you become covered under another health plan, check with the plan administrator to see if you need to provide this certificate. You may also need this certificate to buy, for yourself, for your family, an insurance policy that does not exclude coverage for medical conditions that are present before you enroll.

1. Name of health plan: **Blue Cross Blue Shield Federal Employee Program**
2. Name of participant: **Evelyn L. Johnson**
3. Identification number of participant: **R51078131**
4. Names of any dependents to whom certificate applies:  
First name Last Name (if different)

Effective Date of Coverage

## APPENDIX — 6-G

5. If the participant(s) has at least 18 months of creditable coverage, check here ☒ X  
Date affiliation began if less than 18 months: \_\_\_\_\_

This information is not always available to us. If not provided, please contact employer.

6. Termination date of coverage: 11-16-2003

For further information, please call the telephone number listed on your service card.

**NOTE: SEPARATE CERTIFICATES WILL BE ISSUED IF INFORMATION IS NOT IDENTICAL FOR THE PARTICIPANT AND EACH BENEFICIARY.**



# APPENDIX — 796-G

**Table 51: Atlanta, GA MSA**

## **1996 Pay Rates of the Court Personnel System**

**with 9.74% Locality Pay Differential**

**Steps 1- 24 Developmental Range**

**Steps 25-61 Full Performance Range**

<b>CLASSIFICATION LEVEL</b>						
<b>Step</b>	<b>CL 24</b>	<b>CL 25</b>	<b>CL 26</b>	<b>CL 27</b>	<b>CL 28</b>	<b>CL 29</b>
25	27,520	30,398	33,476	36,739	44,081	52,419
26	27,751	30,651	33,755	37086	44,449	52,856
27	27,981	30,905	34,035	37,393	44,817	53,293
28	28,211	31,155	34,315	37,700	45,185	53,731
29	28,441	31,412	34,594	38,007	45,553	54,168
30	28,672	31665	34,874	38,314	45,921	54,606
31	28,902	31,918	35,154	38,621	46,289	55,043
32	29,132	32,172	35,433	38,928	46,657	55,480
33	29,362	32425	35,713	39,235	47,025	55,918
34	29,593	32,679	35,993	39,542	47,393	56,355
35	29,823	32,932	36,272	39,849	47,761	56,792
36	30,053	33,185	36,552	40,156	48,129	57,250
37	30,283	33,439	36,832	40,463	48,497	57,667
38	30,514	33,692	37,111	40,770	48,865	58,105
39	30,744	33,946	37,391	41,077	49,233	58,542

CLASSIFICATION LEVEL						
Step	CL 24	CL 25	CL 26	CL 27	CL 28	CL 29
40	30,974	34,199	37,671	41,384	49,601	58,979
41	31,205	34,452	37,950	41,691	49,969	59,417
42	31,435	34,706	38,230	41,998	50,337	59,854
43	31,665	34,959	38,510	42,305	50,705	60,291
44	31,895	35,212	38,789	42,612	51,073	60,729
45	32,126	35,466	39,069	42,919	51,441	61,166
46	32,356	35,719	39,349	43,226	51,809	61,604
47	32,586	35,973	39,628	43,533	52,177	62,041
48	32,816	36,226	39,908	43,840	52,545	62,478
49	33,047	36,479	40,188	44,147	52,913	62,916
50	33,277	36,733	40,467	44,454	53,211	63,353
51	33,507	36,986	40,747	44,761	53,649	63,791
52	33,737	37,240	41,027	45,068	54,017	64,228
53	33,968	37,493	41,306	45,375	54,315	64,665
54	34,198	37,746	41,586	45,682	54,753	65,103
55	34,428	38,000	41,866	45,989	55,121	65,540
56	34,658	38,253	42,145	46,296	55,489	65,977
57	34,889	38,506	42,425	46,603	55,857	66,415
58	35,119	38,760	42,705	46,910	56,225	66,852
59	35,349	39,013	42,984	47,217	56,593	67,290
60	35,579	39,267	43,264	47,524	56,961	67,727
61	35,810	39,520	43,544	47,831	57,329	68,164

## APPENDIX — 797-G

**Table 51: Atlanta, GA MSA**

**1997 Pay Rates of the Court Personnel System**

**with 9.74% Locality Pay Differential**

**Steps 1- 24 Developmental Range**

**Steps 25-61 Full Performance Range**

CLASSIFICATION LEVEL						
Step	CL 24	CL 25	CL 26	CL 27	CL 28	CL 29
25	28,290	31,248	34,411	37,808	45,313	53,885
26	28,527	31,509	34,699	38,124	45,692	54,334
27	28,763	31,770	34,986	38,440	46,070	54,783
28	29,000	32,031	35,273	38,756	46,448	55,232
29	29,237	32,292	35,561	39,071	46,826	55,681
30	29,473	32,553	35,848	39,387	47,204	56,130
31	29,710	32,814	36,135	39,703	47,583	56,579
32	29,946	33,075	36,423	40,019	47,961	57,028
33	30,183	33,336	36,710	40,335	48,339	57,477
34	30,420	33,597	36,998	40,651	48,717	57,926
35	30,656	33,858	37,285	40,967	49,096	58,375
36	30,893	34,119	37,572	41,283	49,474	58,824
37	31,130	34,380	37,860	41,599	49,852	59,273
38	31,366	34,641	38,147	41,915	50,230	59,722

# APPENDIX — 797-G

CLASSIFICATION LEVEL						
Step	CL 24	CL 25	CL 26	CL 27	CL 28	CL 29
39	31,603	34,901	38,434	42,230	50,608	60,171
40	31,840	35,162	37,722	42,546	50,987	60,620
41	32,076	35,423	39,009	42,862	51,365	61,069
42	32,313	35,684	39,297	43,178	51,743	61,518
43	32,550	35,945	39,584	43,494	52,121	61,967
44	32,786	36,206	39,871	43,810	52,500	62,416
45	33,023	36,467	40,159	44,126	52,878	62,865
46	33,260	36,728	40,446	44,442	53,276	63,314
47	33,496	36,989	40,733	44,758	53,634	63,763
48	33,733	37,250	41,021	45,073	54,014	64,212
49	33,970	37,511	41,308	45,389	54,391	64,661
50	34,206	37,772	41,595	45,705	54,769	65,110
51	34,443	38,033	41,883	46,021	55,147	65,559
52	34,680	38,294	42,170	46,337	55,525	66,008
53	34,916	38,555	42,458	46,653	55,904	66,457
54	35,153	38,816	42,745	46,969	56,282	66,906
55	35,390	39,077	43,032	47,285	56,660	67,355
56	35,626	39,338	43,320	47,601	57,038	67,804
57	35,863	39,599	43,607	47,917	57,417	68,253
58	36,100	39,860	43,894	48,232	57,795	68,702
59	36,336	40,121	44,182	48,548	58,173	69,151
60	36,573	40,382	44,469	48,864	58,551	69,600
61	36,810	40,642	44,757	49,180	58,929	70,049

## APPENDIX — 798-G

**Table 51: Atlanta, GA MSA**

**1998 Pay Rates of the Court Personnel System**

**with 9.74% Locality Pay Differential**

**Steps 1- 24 Developmental Range**

**Steps 25-61 Full Performance Range**

CLASSIFICATION LEVEL						
Step	CL 24	CL 25	CL 26	CL 27	CL 28	CL 29
25	29,086	32,127	35,379	38,871	46,588	55,400
26	29,329	32,396	35,674	39,195	46,976	55,862
27	29,572	32,664	35,970	39,519	47,365	56,324
28	29,815	32,933	36,265	39,843	47,753	56,786
29	30,058	33,201	36,560	40,167	48,142	57,248
30	30,302	33,470	36,855	40,491	48,531	57,710
31	30,545	33,739	37,150	40,815	48,919	58,172
32	30,788	34,007	37,445	41,138	49,308	58,634
33	31,031	34,276	37,741	41,462	49,696	59,096
34	31,274	34,545	38,036	41,786	50,085	59,557
35	31,517	34,813	38,331	42,110	50,474	60,019
36	31,761	35,082	38,626	42,434	50,862	60,481
37	32,004	35,351	38,921	42,758	51,251	60,943
38	32,247	35,619	39,217	43,081	51,640	61,405



# APPENDIX — 798-G

Step	CL 24	CL 25	CL 26	CL 27	CL 28	CL 29
39	32,490	35,888	39,512	43,405	52,028	61,867
40	32,733	36,156	39,807	43,729	52,417	62,329
41	32,976	36,423	40,102	44,053	52,805	62,791
42	33,219	36,694	40,397	44,377	53,194	63,252
43	33,463	36,962	40,692	44,701	53,583	63,714
44	33,706	37,231	40,988	45,025	53,971	64,176
45	33,949	37,500	41,283	45,348	54,360	64,638
46	34,192	37,768	41,578	45,672	54,749	65,100
47	34,435	38,037	41,873	45,996	55,137	65,562
48	34,678	38,305	42,168	46,320	55,526	66,024
49	34,922	38,574	42,464	46,644	55,914	66,486
50	35,165	38,843	42,759	46,968	56,303	66,948
51	35,408	39,111	43,054	47,292	56,692	67,409
52	35,651	39,380	43,349	47,615	57,080	67,871
53	35,894	39,649	43,644	47,939	57,469	68,333
54	36,167	39,917	43,939	48,263	57,857	68,795
55	36,380	40,186	44,235	48,587	58,246	69,257
56	36,624	40,455	44,530	48,911	58,635	69,719
57	36,867	40,723	44,825	49,235	59,023	70,181
58	37,110	40,992	45,120	49,558	59,412	70,643

## APPENDIX — 798-G

**Table 51: Atlanta, GA MSA**

**1998 Rates of the Court Personnel System**

**with 9.74% Locality Pay Differential**

**Steps 1- 24 Developmental Range**

**Steps 25-61 Full Performance Range**

CLASSIFICATION LEVEL						
Step	CL 24	CL 25	CL 26	CL 27	CL 28	CL 29
25	29,086	32,127	35,379	38,871	46,588	55,400
26	29,329	32,396	35,674	39,195	46,976	55,862
27	29,572	32,664	35,970	39,519	47,365	56,324
28	29,815	32,933	36,265	39,843	47,753	56,786
29	30,058	33,201	36,560	40,167	48,142	57,248
30	30,302	33,470	36,855	40,491	48,531	57,710
31	30,545	33,739	37,150	40,815	48,919	58,172
32	30,788	34,007	37,445	41,138	49,308	58,634
33	31,031	34,276	37,741	41,462	49,696	59,096
34	31,274	34,545	38,036	41,786	50,085	59,557
35	31,517	34,813	38,331	42,110	50,474	60,019
36	31,761	35,082	38,626	42,434	50,862	60,481
37	32,004	35,351	38,921	42,758	51,251	60,943
38	32,247	35,619	39,217	43,081	51,640	61,405



# APPENDIX — 798-G

Step	CL 24	CL 25	CL 26	CL 27	CL 28	CL 29
39	32,490	35,888	39,512	43,405	52,028	61,867
40	32,733	36,156	39,807	43,729	52,417	62,329
41	32,976	36,423	40,102	44,053	52,805	62,791
42	33,219	36,694	40,397	44,377	53,194	63,252
43	33,463	36,962	40,692	44,701	53,583	63,714
44	33,706	37,231	40,988	45,025	53,971	64,176
45	33,949	37,500	41,283	45,348	54,360	64,638
46	34,192	37,768	41,578	45,672	54,749	65,100
47	34,435	38,037	41,873	45,996	55,137	65,562
48	34,678	38,305	42,168	46,320	55,526	66,024
49	34,922	38,574	42,464	46,644	55,914	66,486
50	35,165	38,843	42,759	46,968	56,303	66,948
51	35,408	39,111	43,054	47,292	56,692	67,409
52	35,651	39,380	43,349	47,615	57,080	67,871
53	35,894	39,649	43,644	47,939	57,469	68,333
54	36,167	39,917	43,939	48,263	57,857	68,795
55	36,380	40,186	44,235	48,587	58,246	69,257
56	36,624	40,455	44,530	48,911	58,635	69,719
57	36,867	40,723	44,825	49,235	59,023	70,181
58	37,110	40,992	45,120	49,558	59,412	70,643

# APPENDIX — 799-G

**Table 51: Atlanta, GA MSA**

## **1999 Pay Rates of the Court Personnel System**

**with 9.74% Locality Pay Differential**

**Steps 1- 24 Developmental Range**

**Steps 25-61 Full Performance Range**

CLASSIFICATION LEVEL						
Step	CL 24	CL 25	CL 26	CL 27	CL 28	CL 29
25	30,126	33,276	36,644	40,262	48,253	57,381
26	30,377	33,553	36,950	40,598	48,655	57,860
27	30,629	33,830	37,257	40,934	49,058	58,339
28	30,881	34,108	37,563	41,270	49,460	58,818
29	31,133	34,385	37,869	41,606	49,862	59,297
30	31,384	34,662	38,175	41,942	50,264	59,776
31	31,636	34,940	38,481	42,278	50,666	60,255
32	31,888	35,217	38,787	42,614	51,068	61,734
33	32,140	35,494	39,093	42,950	51,470	61,213
34	32,391	35,772	39,400	43,286	51,873	61,692
35	32,643	36,049	39,706	43,622	52,275	62,170
36	32,895	36,326	40,012	43,958	52,677	62,649
37	33,147	36,604	40,318	44,294	53,079	63,128
38	33,398	36,881	40,624	44,630	53,481	63,607

# APPENDIX — 799-G

CLASSIFICATION LEVEL						
Step	CL 24	CL 25	CL 26	CL 27	CL 28	CL 29
39	33,650	37,158	40,930	44,966	53,883	64,086
40	33,902	37,436	41,236	45,302	54,285	64,565
41	34,154	37,713	41,543	45,638	54,688	65,044
42	34,405	37,991	41,849	45,974	55,090	65,523
43	34,657	38,268	42,155	46,310	55,492	66,002
44	34,909	38,545	42,461	46,646	55,894	66,481
45	35,161	38,823	42,767	46,982	56,296	66,960
46	35,412	39,100	43,073	47,318	56,698	67,439
47	35,664	39,377	43,379	47,654	57,100	67,918
48	35,916	39,655	43,686	47,990	57,503	68,397
49	36,168	39,932	43,992	48,326	57,905	68,876
50	36,419	40,209	44,298	48,662	58,307	69,355
51	36,671	40,487	44,604	48,998	58,709	69,834
52	36,923	40,764	44,910	49,334	59,111	70,313
53	37,174	41,041	45,216	49,670	59,513	70,792
54	37,426	41,319	45,522	50,006	59,915	71,270
55	37,678	41,596	45,829	50,342	60,318	71,749
56	37,930	41,873	46,135	50,678	60,720	72,228
57	38,181	42,151	46,441	51,014	61,122	72,707
58	38,433	42,428	46,747	51,350	61,524	73,186

# APPENDIX — 799-G

**Table 51: Atlanta, GA MSA**

**1999 Pay Rates of the Court Personnel System**

**with 9.74% Locality Pay Differential**

**Steps 1- 24 Developmental Range**

**Steps 25-61 Full Performance Range**

CLASSIFICATION LEVEL						
Step	CL 24	CL 25	CL 26	CL 27	CL 28	CL 29
25	30,126	33,276	36,644	40,262	48,253	57,381
26	30,377	33,553	36,950	40,598	48,655	57,860
27	30,629	33,830	37,257	40,934	49,058	58,339
28	30,881	34,108	37,563	41,270	49,460	58,818
29	31,133	34,385	37,869	41,606	49,862	59,297
30	31,384	34,662	38,175	41,942	50,264	59,776
31	31,636	34,940	38,481	42,278	50,666	60,255
32	31,888	35,217	38,787	42,614	51,068	61,734
33	32,140	35,494	39,093	42,950	51,470	61,213
34	32,391	35,772	39,400	43,286	51,873	61,692
35	32,643	36,049	39,706	43,622	52,275	62,170
36	32,895	36,326	40,012	43,958	52,677	62,649
37	33,147	36,604	40,318	44,294	53,079	63,128
38	33,398	36,881	40,624	44,630	53,481	63,607

# APPENDIX — 799-G

CLASSIFICATION LEVEL						
Step	CL 24	CL 25	CL 26	CL 27	CL 28	CL 29
39	33,650	37,158	40,930	44,966	53,883	64,086
40	33,902	37,436	41,236	45,302	54,285	64,565
41	34,154	37,713	41,543	45,638	54,688	65,044
42	34,405	37,991	41,849	45,974	55,090	65,523
43	34,657	38,268	42,155	46,310	55,492	66,002
44	34,909	38,545	42,461	46,646	55,894	66,481
45	35,161	38,823	42,767	46,982	56,296	66,960
46	35,412	39,100	43,073	47,318	56,698	67,439
47	35,664	39,377	43,379	47,654	57,100	67,918
48	35,916	39,655	43,686	47,990	57,503	68,397
49	36,168	39,932	43,992	48,326	57,905	68,876
50	36,419	40,209	44,298	48,662	58,307	69,355
51	36,671	40,487	44,604	48,998	58,709	69,834
52	36,923	40,764	44,910	49,334	59,111	70,313
53	37,174	41,041	45,216	49,670	59,513	70,792
54	37,426	41,319	45,522	50,006	59,915	71,270
55	37,678	41,596	45,829	50,342	60,318	71,749
56	37,930	41,873	46,135	50,678	60,720	72,228
57	38,181	42,151	46,441	51,014	61,122	72,707
58	38,433	42,428	46,747	51,350	61,524	73,186



# APPENDIX — 700-G

**Table 51: Atlanta, GA MSA**

## **2000 Pay Rates of the Court Personnel System**

**with 9.74% Locality Pay Differential**

**Steps 1- 24 Developmental Range**

**Steps 25-61 Full Performance Range**

CLASSIFICATION LEVEL						
Step	CL	CL	CL	CL	CL	CL
	24	25	26	27	28	29
25	31,561	34,860	38,389	42,179	50,552	60,114
26	31,824	35,151	38,710	42,531	50,974	60,616
27	32,088	35,442	39,031	42,883	51,396	61,118
28	32,352	35,732	39,352	43,235	51,818	61,619
29	32,616	36,023	39,673	43,587	52,240	62,121
30	32,879	36,314	39,994	43,939	52,662	62,623
31	33,143	36,604	40,314	44,291	53,084	63,124
32	33,407	36,895	40,635	44,643	53,506	63,626
33	33,671	37,186	40,956	44,995	53,928	64,128
34	33,934	37,476	41,277	45,347	54,340	64,629
35	34,198	37,767	41,598	45,700	54,772	65,131
36	34,462	38,058	41,918	46,052	55,194	65,633
37	34,726	38,348	42,239	46,404	55,616	66,134
38	34,990	38,639	42,560	46,756	56,038	66,636

# APPENDIX — 700-G

39	35,253	38,930	42,881	47,108	56,460	67,138
40	35,517	39,221	43,202	47,460	56,882	67,640
41	35,781	39,511	43,523	47,812	57,304	68,141
42	36,045	39,802	43,843	48,164	57,726	68,643
43	36,308	40,093	44,164	48,516	58,148	69,145
44	36,572	40,383	44,485	48,868	58,570	69,646
45	36,836	40,674	44,806	49,220	58,992	70,148
46	37,100	40,965	45,127	49,572	59,414	70,650
47	37,363	41,255	45,448	49,924	59,836	71,151
48	37,627	41,546	45,768	50,276	60,258	71,653
49	37,891	41,837	46,089	50,628	60,680	72,155
50	38,155	42,127	46,410	50,980	61,102	72,657
51	38,418	42,418	46,731	51,332	61,524	73,158
52	38,862	42,709	47,052	51,684	61,946	73,660
53	38,946	42,999	47,373	52,036	62,369	74,162
54	39,210	43,290	47,693	52,388	62,791	74,663
55	39,474	43,581	48,014	52,740	63,231	75,165
56	39,737	43,871	48,335	53,093	63,635	75,667
57	40,001	44,162	48,656	53,445	64,057	76,168
58	40,265	44,453	48,977	53,797	64,479	76,670



## APPENDIX — 701-G

Table 51: Atlanta, GA MSA

### 2001 Pay Rates of the Court Personnel System

with 9.74% Locality Pay Differential

Steps 1- 24 Developmental Range

Steps 25-61 Full Performance Range

CLASSIFICATION LEVEL						
Step	CL 24	CL 25	CL 26	CL 27	CL 28	CL 29
24	32,442	35,833	39,460	43,355	51,962	61,792
25	32,714	36,134	39,792	43,720	52,399	62,311
26	32,987	36,435	40,125	44,086	52,836	62,830
27	33,260	36,736	40,457	44,451	53,273	63,350
28	33,532	37,037	40,790	44,816	53,710	63,869
29	33,805	37,338	41,122	45,181	54,146	64,389
30	34,078	37,639	41,455	45,546	54,583	64,908
31	34,351	37,940	41,787	45,911	55,020	65,427
32	34,623	38,241	42,120	46,276	55,457	65,947
33	34,896	38,542	42,452	46,641	55,894	66,466
34	35,169	38,843	42,785	47,006	56,330	66,986
35	35,442	39,144	43,117	47,371	56,767	67,505
36	35,714	39,445	43,450	47,737	57,204	68,024
37	35,987	39,746	43,782	48,102	57,641	68,544

# APPENDIX — 701-G

38	36,260	40,047	44,115	48,467	58,078	69,063
39	36,533	40,348	44,447	48,832	58,514	69,583
40	36,805	40,649	44,780	49,197	58,951	70,102
41	35,078	40,950	45,112	49,562	59,388	70,621
42	37,351	41,251	45,445	49,927	59,825	71,141
43	37,624	41,552	45,777	50,292	60,262	71,660
44	37,896	41,853	46,110	50,657	60,699	72,180
45	38,169	42,154	46,442	51,022	61,135	72,699
46	38,442	42,455	46,775	51,387	61,572	73,218
47	38,714	42,756	47,107	51,753	62,009	73,738
48	38,987	43,057	47,440	52,118	62,446	74,257
49	39,260	43,358	47,772	52,483	62,883	74,777
50	39,533	43,659	18,105	52,848	63,319	75,296
41	39,805	43,959	48,437	53,213	63,756	75,815
52	40,078	44,260	48,770	53,578	64,193	76,355
53	40,351	44,561	49,102	53,943	64,630	76,854
54	40,624	44,862	49,435	54,308	65,067	77,374
55	40,896	45,163	49,767	54,673	65,504	77,893
56	41,169	45,464	50,100	55,038	65,940	78,412
57	41,442	45,765	50,432	55,404	66,377	78,932
58	41,715	46,066	50,765	55,769	66,814	79,451
59	41,987	46,367	51,097	56,134	67,251	79,971
60	42,260	46,668	51,430	56,499	67,688	80,490
61	42,533	46,969	51,762	56,864	68,124	81,00

# APPENDIX — 702-G

**Table 51: Atlanta, GA MSA**

## 2002 Pay Rates of the Court Personnel System

**with 9.74% Locality Pay Differential**

**Steps 1- 24 Developmental Range**

**Steps 25-61 Full Performance Range**

CLASSIFICATION LEVEL						
Step	CL 24	CL 25	CL 26	CL 27	CL 28	CL 29
25	34,229	37,801	41,364	45,744	54,825	65,195
26	34,514	38,121	41,982	46,126	55,283	65,739
27	34,800	38,436	42,330	46,508	55,740	66,282
28	35,085	38,751	42,678	46,890	56,198	66,825
29	35,370	39,066	43,026	47,272	56,655	67,368
30	35,656	39,381	43,374	47,653	57,113	67,912
31	35,941	39,696	43,722	48,035	57,571	68,455
32	36,226	40,011	44,069	48,417	58,028	68,998
33	36,512	40,326	44,417	48,799	58,486	69,541
34	37,797	40,641	44,765	49,181	58,944	70,084
35	37,082	40,956	45,113	49,563	59,401	70,628
36	37,368	41,271	45,461	49,945	59,859	71,171
37	37,653	41,586	45,809	50,327	60,316	71,714
38	37,938	41,901	46,157	50,709	60,774	72,257
39	38,224	42,216	46,505	51,091	61,232	72,800

# APPENDIX — 702-G

CLASSIFICATION LEVEL						
Step	CL 24	CL 25	CL 26	CL 27	CL 28	CL 29
40	38,509	42,531	46,852	51,472	61,689	73,344
41	38,794	42,846	47,200	51,854	62,147	73,887
42	39,080	43,161	47,548	52,236	62,604	74,430
43	39,365	43,476	47,896	52,618	63,062	74,973
44	39,650	43,791	48,244	53,000	63,520	75,516
45	39,935	44,106	48,592	53,382	63,977	76,060
46	40,221	44,421	48,940	53,764	64,435	76,603
47	40,506	44,736	49,288	54,146	64,893	77,146
48	40,791	45,050	49,635	54,528	65,350	77,689
49	41,077	46,365	49,983	54,910	65,808	78,233
50	41,362	45,680	50,331	55,291	66,265	78,776
51	41,647	45,995	50,679	55,673	66,723	79,319
52	41,933	46,310	51,027	56,055	67,181	79,862
53	42,218	46,625	51,375	56,437	67,638	80,405
54	42,503	46,940	52,723	56,819	68,096	80,949
55	42,789	47,255	52,071	57,201	68,553	81,492
56	43,074	47,570	52,418	57,583	69,011	82,035
57	43,359	47,885	52,766	57,965	69,469	82,578
58	43,645	48,200	53,114	58,347	69,926	83,121
59	43,930	48,515	53,462	58,728	70,384	83,665
60	44,215	48,830	53,810	59,110	70,842	84,208
61	44,501	49,145	54,158	59,492	71,299	84,751

## APPENDIX — 703-G

Table 51: Atlanta, GA MSA

**2003 Pay Rates of the Court Personnel System**

**with 9.74% Locality Pay Differential**

**Steps 1- 24 Developmental Range**

**Steps 25-61 Full Performance Range**

CLASSIFICATION LEVEL						
Step	CL 24	CL 25	CL 26	CL 27	CL 28	CL 29
25	35,290	38,979	42,925	47,162	56,525	67,217
26	35,584	39,303	43,283	47,556	56,997	67,778
27	35,878	39,628	43,640	47,950	57,469	68,338
28	36,162	39,953	43,998	48,344	57,941	68,899
29	36,467	40,278	44,356	48,738	58,412	69,460
30	36,761	40,603	44,714	49,132	58,884	70,021
31	37,055	40,928	45,071	49,526	59,356	70,581
32	37,349	41,252	45,429	49,920	59,828	71,142
33	37,643	41,577	45,787	50,314	60,300	71,703
34	37,937	41,902	46,145	50,708	60,772	72,264
35	38,231	42,227	46,502	51,102	61,244	72,825
36	38,525	42,552	46,860	51,495	61,716	73,385
37	38,819	42,877	47,218	51,889	62,187	73,946
38	39,114	43,201	47,576	52,283	62,659	74,507



# APPENDIX — 703-G

CLASSIFICATION LEVEL						
Step	CL 24	CL 25	CL 26	CL 27	CL 28	CL 29
39	39,408	43,526	47,933	52,677	63,131	75,068
40	39,702	43,851	48,291	53,071	63,603	75,628
41	39,996	44,176	48,649	53,645	64,075	76,189
42	40,290	44,501	49,007	53,859	64,547	76,750
43	40,584	44,825	49,364	54,253	65,019	77,311
44	40,878	45,150	49,722	54,647	65,491	77,872
45	41,172	45,475	50,080	55,041	65,963	78,432
46	41,466	45,800	50,438	55,345	66,434	78,993
47	41,760	46,125	50,795	55,829	66,906	79,554
48	42,055	46,450	51,153	56,223	67,378	80,115
49	42,349	46,774	51,511	56,617	67,850	80,675
50	42,643	47,099	51,869	57,011	68,322	81,236
51	42,937	47,424	52,226	57,405	68,794	81,797
52	43,231	47,749	52,584	57,799	69,266	82,358
53	43,525	48,074	52,942	58,193	69,738	82,918
54	43,819	48,399	53,300	58,587	70,209	83,479
55	44,113	48,723	53,657	58,981	70,681	84,040
56	44,407	49,048	54,015	59,375	71,153	84,601
57	44,701	49,373	54,373	59,769	71,625	85,162
58	44,996	49,698	54,731	60,163	72,097	85,722
59	45,290	50,023	55,088	60,557	72,569	86,283
60	45,584	50,348	55,446	60,951	73,041	86,844
61	45,878	50,672	55,804	61,345	73,513	87,405

## **APPENDIX — 8-G**

### **EXCERPTS IN RELEVANT PART**

#### **REPORT OF SELF-STUDY OF STAFF**

**ATTORNEYS' OFFICE—SEPTEMBER 2001**

#### **EXECUTIVE SUMMARY**

##### **BACKGROUND**

###### **A. Recruitment (Tab B, pages 2-11)**

Currently, the recruitment and personnel responsibilities of the SAO are concentrated in a single untitled individual. The Committee believes that the current recruitment and personnel needs of the SAO already exceeded the limitations of this employee and that, moreover, in light of the court's announced plans to increase the attorney staff in the near term, the SAO's future recruitment and personnel needs, under the current system, will likely not be adequately addressed. In addition, anticipating the expansion of the office, the Committee recognizes the need to evaluate available resources for use in increasing the applicant pool and to implement process to more efficiently and systematically predict and fill future recruitment needs.

###### **B. Retention (Tab B, pages 11-14)**

Attorney retention is of growing concern within the SAO. Many attorneys have resigned from the office prior to completion of their terms. Other employees have declined opportunities to extend their stay upon the end of their terms. The Committee recognizes that attorneys (new and experienced) and support staff of the SAO typically receive lower salaries than their private-sector counterparts and that this disparity has an adverse impact on the SAO's ability to recruit and retain new employees. While the Committee believes that increasing salaries will benefit the court in its effort to attract and keep future



## APPENDIX — 8-G

employees, the Committee also recognizes that budgetary constraints will necessarily influence the court's ability to offer increased salaries. The Committee is of the view that providing non-salary benefits, will aid the court in attracting and retaining the best employees. Similarly, the Committee believes that improved communication between management and staff and creation of a work environment where employees are encouraged to share ideas and experiences will provide a more satisfying work environment and will make the SAO a more appealing employer.

Presented below is a summary of the recommendations of the Recruitment and Retention Committee (Committee No. 2). Committee No. 2 analyzed the current policies of the SAO relating directly to personnel recruitment and retention, as well as policies having indirect influence, such as employment terms and notice of separation. *The Committee offers recommendations that principally request the bifurcation of the recruitment and personnel management responsibilities through the creation of the separate positions of a Recruitment Coordinator and a Personnel Manager.* The Committee also recommends establishment of a two-year term with options for indefinite renewals. The Committee's recommendations with accompanying rationale are more fully discussed in the Compilation of Committee Reports at Tab B.

**The Committee makes the following recommendations:**

**A. Recruitment Recommendations (Tab B, pages 4-11)**

*14. Establish the position of Recruitment Coordinator with responsibility principally for evaluating recruitment needs, coordinating and implementing recruitment practices*

## APPENDIX — 8-G

*and producing yearly reports concerning SAO's fair employment practices.*

15. *Establish the position of Personnel Manager responsible for personnel administrative matters such as salary, benefits, leave and exit paperwork, coordination of training and staff annual evaluations, travel arrangements, and coordination of new employee orientation.*

16. Establish a Recruiting Committee consisting of the Senior Staff Attorney, the Recruitment Coordinator, supervising staff attorneys, senior line attorneys and unit managers with responsibility of interviewing and selecting candidates.

17. Retain a staff, as determined by the Recruitment Coordinator, to support the Coordinator and the Recruitment Committee.

18. Concentrate recruitment efforts in Internet advertising rather than the more costly print ads. Expand recruitment at legal job fairs and minority recruitment conferences and on-campus recruitment. Money saved from Internet advertising can be used, in particular, to fund on-campus recruitment at staff attorney alma matters. . . .

### **B. Retention Recommendations (Tab B, pages 12-14)**

33. Along with the non-salary benefits previously recommended, it is recommended that staff attorney and support staff salaries be increased. Greater job satisfaction may ensue from encouragement of staff relations through social outings, group sports, celebrations and encouragement, staff development through paralegal training for support staff, CLE classes and seminars. . . .

35. Increase communication between management and

## APPENDIX -- 8-G

staff through development of a "communication tree" pursuant to which supervisors and unit managers with line attorneys they supervise. Constructive feedback and ideas from all employees should be encouraged. . . .

39. Restructure support staff to include positions such as data quality analyst, case administrator, paralegals and data entry clerks allow for development of new skills and access to higher pay grades.

### **C. Additional Recommendations Affecting Recruitment and Retention (Tab B, pages 14-23)**

Supervisor attorneys and support staff enjoy indefinite employee status but line attorneys do not. Over the past three years, the SAO has experimented with differing terms for additional years. Presently, the SAO hires on a three-year term. Recently, the SAO has presented the court with a proposal to create a percentage of indefinite attorney positions. Under current SAO policy, term attorneys can resign in good standing only upon the completion of their terms and after providing the SAO with two months' notice. The Committee believes that a two-year term with the possibility of indefinite employment aides in attracting and retaining attorneys interested in a federal judicial clerkship-type experience as well as attorneys desiring a longer career with the court. The Committee believes further, that the two-month notice policy is impractical and unworkable to a large extent.

## **APPENDIX — 8-G**

### **Senior Staff Attorney's Action Plan**

I sincerely believe the Staff Attorneys' Office (SAO) will be a better office in the future because of the study and the work performed by the staff. Based on the committees' recommendations, I—absent the Court's objection—am taking the following actions and making the following changes in our office policies effective November 1, 2001.

### **The Office Growth and Leadership**

When the study began on June 30, there were 36 attorneys on board and nine of those attorneys have since left. By July 31, there were 39, and by September 24, there were 47, which means 27 new attorneys have begun work since June 30. I expect to have the 60 attorneys the Court has already authorized on board by October 22. A backlog has developed during the self-study process and the training of 27 new attorneys, but with increased staff, we will be able to eliminate it within a reasonable time.

### **Concerns**

- Initial term of employment is too long
- Indefinite term for attorneys who wish to remain with the office
- Management reaction if term is not completed
- Perception of harshness by requirement of two-months' notice of intent to resign and the three-strikes policy
- Production quotas
- Communication between line attorneys and supervisors
- Low morale and poor job satisfaction
- Fear of losing job
- Distrust and inadequacy of management
- Inability to retain attorneys for their respective terms

### **Solutions**

To address these concerns, I intend to implement or reinforce the following policies. The Senior Staff Attorney's

## APPENDIX — 8-G

management authority will allow implementation of these items, except for those relating to the term employment, without court approval. Still, I naturally wanted the court to know about the changes I intend to implement.

- Create a new management structure (Attachment A)  
(New SAO organizational chart that was distributed to all employees on March 1, 2002.)
- Implement two-year terms for all new attorneys
- At the end of the initial term, invite some attorneys to stay on for an indefinite term . . . .  
. . . . .

### II. Employee Recruitment and Retention Committee (TAB B)

#### Recommendation's 14-48

##### Recruitment

Subject to court authorization, I intend to reorganize the office structure to include a leadership position solely devoted to recruitment, retention, and professional development (See Attachment A). This professional manager for recruiting, professional development, and training will report directly to me and work exclusively to meet the goals of the office and the court to be staffed fully with superior attorneys. This manager will be responsible for evaluating recruitment needs, as well as coordinating and implementing recruitment practices. **This person will also take on the duties of a personnel manager and be responsible for personnel and administrative matters such as salary, benefits, leave and exit paperwork coordination of training and staff evaluations, travel arrangements, and coordination of new employee orientation. Appropriate staff will be put into place to support this position.**

# APPENDIX — 8-G

## STAFF ATTORNEYS' OFFICE 11<sup>TH</sup> CIRCUIT COURT OF APPEALS

Sr. Staff Atty.

|  
|

Jud Div Mgr

Adm Mgr

Mgr Recruit

SA SA SA SA

Adm Case Mgr Pers Mgr

SA SA SA SA

4 Ct Secs HR Coord

SA SA SA SA

Recep Support Staff

(10 Supervising Attys)

(49 Line Attys)

B/up Recep/  
Data Entry

Runner

ATTACHMENT A



## APPENDIX — 8-G

### [Petitioner's Note:

Between March—June 2001, there was a massive exodus of attorneys that left before their terms were completed due to “distrust and inadequacy of management” and “low morale and poor job satisfaction.” The situation precipitated the court mandate to initiate a self-study concerning the issues between the management and staff. All SAO employees participated excluding the senior staff attorney, Naomi Godfrey. The court appointed two upper management employees from other court unit to assist the SAO employees with the self-study. All employees were divided into five separate committees to study each area of concern in the SAO. Each committee member made recommendation to the committee chair of that particular committee. The committee chair then drafted and submitted the report to the appointed executive committee members. The executive committee members studied the reports from each committee, drafted and submitted their recommendation to the court. Likewise, the senior staff attorney prepared her report as well and presented her recommendations to the judges.

Since one of Petitioner's allegations was intentional discrimination due to non promotion, as shown above from the recruitment committee report, they identified Petitioner's position as “the recruitment and personnel responsibilities of the SAO are concentrated in a single untitled individual.” Because attorney retention was a major issue with the SAO staffing, and due to the growth of the office, the executive committee recommended separating the major responsibilities involved in recruiting from personnel. They recommended hiring a recruiter whose major responsibility was to recruit high caliber attorneys with the possibility of retaining some of them long-term. (See page 2, number 14, 15).

While Petitioner was never involved in interviewing attorney applicants and in the selection process, all administrative duties regarding recruiting were part of



## APPENDIX — 8-G

Petitioner's duties. Furthermore, recommendation number 15, was exactly Petitioner's major duties and responsibilities.

Under the "Senior Staff Attorney's Action Plan and Solutions," she asserted, *"The Senior Staff Attorney's management authority will allow implementation of these items [solutions], except for those relating to the term employment, without court approval."* She also presented to the court an organizational chart (Attachment A) above [not the boxed organizational chart but the chart above shows the lines of supervision of employees] how she was going to reorganize and implement her recommendation. However, on her recruitment recommendation above, she asserted:

Subject to court authorization, I intend to reorganize the office structure to include a leadership position solely devoted to recruitment, retention, and professional development (See Attachment A). This professional manager for recruiting, professional development, and training will report directly to me and work exclusively to meet the goals of the office and the court to be staffed fully with superior attorneys. This manager will be responsible for evaluating recruitment needs, as well as coordinating and implementing recruitment practices. This person will also take on the duties of a personnel manager and be responsible for personnel and administrative matters such as salary, benefits, leave and exit paperwork coordination of training and staff evaluations, travel arrangements, and coordination of new employee orientation. Appropriate staff will be put into place to support this position.

## APPENDIX — 8-G<sup>1</sup>

At the 2002 EDR hearing, Petitioner alleged that the personnel manager position was arbitrarily removed from the organizational chart, therefore, the position no longer exists. Naomi Godfrey vehemently denied Petitioner's allegation and asserted lack of funding was the reason why this was the only position not filled during the office reorganization. While Naomi Godfrey described Petitioner's duties above, she really had no intention filling the personnel manager's position, to prevent Petitioner from applying. While Petitioner's application for the recruiting manager position was never considered and the only application that did not go through the standard process, Naomi Godfrey was determined to hold Petitioner back. Shortly after Petitioner filed the EDR complaint, a protected federal activity, she responded by retaliating against Petitioner's cause of action. While Petitioner reported Naomi Godfrey's unlawful actions to the higher management, they did not do anything to stop her abusive and unlawful actions. She carefully, intentionally, and maliciously planned her evil scheme, and indiscriminately and underhandedly took away Petitioner's substantial duties and responsibilities without cause. Naomi Godfrey's mean-spirited has been her sick pattern and underhanded means of control and discriminatory act against Petitioner's career growth, who happened to be of an Asian origin. Everything came to light recently due to the change of dynamics in the SAO.

# **APPENDIX — G-9**

## **Pay Computations and Comparison Concerning the Disputed Pay of Full Promotion During the Pay Conversion from JSP to CPS**

<i>Nature of Action</i>	<i>Title</i>	<i>Effective Date of Action</i>	<i>Actual Grade CPS CL 25</i>	<i>Annual Salary \$</i>
<b>This chart illustrates reconstruction of pay based on within-grade increases compared to a promotion (movement to a higher grade) with an increase of 1.06%, pay that should have been effected in 1996</b>				
Promotion	Sec to Sr SA	07/24/95	JSP 8/4	29,542
Pay Adjustmnt	Same	01/08/96	Same	30,274
CPS Mass Conversion (the amount of annual salary closest to the JSP Pay	Same	02/19/96	CL 25/25 equiv to JSP 9/1	30,398
WGI (should have rec'd full promotion here rather than WGI)	Same	07/22/96	25/29	31,412
WGI (Out of cycle	Same	08/19/96	25/33	32,425
Pay Adjustmnt	Same	01/06/97	Same	33,336
WGI	Same			
WGI	Same	08/18/97	25/37	<b>34,380</b> ***

# **APPENDIX — G-9**

<i>Nature of Action</i>	<i>Title</i>	<i>Effective Date of Action</i>	<i>Actual Grade CPS CL 25</i>	<i>Annual Salary  \$</i>
<b>This chart illustrates reconstruction of pay based on within-grade increases compared to a promotion (movement to a higher grade) with an increase of 1.06%, pay that should have been effected in 1996</b>				
Pay Adjustmnt	Same	01/05/98	Same	35,351
WGI	Same			
WGI	Same	08/17/98	25/39	35,888
Pay Adjustmnt	Same	01/04/99	Same	37,158
WGI	Same	08/16/99	25/41	37,712
Pay Adjustmnt	Same	01/03/00	25/41	39,511
WGI	Same			
WGI	Same	08/14/00	25/43	40,093
Pay Adjustmnt	Same	01/01/01	Same	41,552
WGI	Same			
WGI	Same	08/13/01	25/45	42,154

\* Under CPS, an employee placed in the developmental range, within-grade increase is due in six months when employee is performing satisfactorily.

\*\* Within-grade increase due six months from the anniversary date of the last promotion, in this case, July 22, 1996, WGI was due the beginning of the pay period around January 22, 1997.

\*\*\* Seven months later, annual pay still less than having received a full promotion.

# APPENDIX — G-9

[PLEASE MATCH THIS CHART TO CHARTS 1 & 2]

<i>Nature of Action</i>	<i>Title</i>	<i>Effective Date of Action</i>	<i>Should Have Been Grade CPS CL 26</i>	<i>Annual Salary</i> \$
<b>This chart illustrates reconstruction of pay based on within-grade increases compared to a promotion (movement to a higher grade) with an increase of 1.06%, pay that should have been effected in 1996</b>				
Promotion	Sec to Sr SA			
Pay Adjustmnt	Same			
CPS Mass Conversion (the amount of annual salary closest to the JSP Pay)	Same			
WGI (should have rec'd full promotion here rather than WGI)	Same	07/22/96	26/21*	32,357
WGI (Out of cycle)				
Pay Adjustmnt	Same	01/06/97	CL 26/21	33,262
WGI	Same	Jan 1997	CL 26/25**	34,411
WGI	Same	01/05/98	Same	35,379

# APPENDIX — G-9

<i>Nature of Action</i>	<i>Title</i>	<i>Effective Date of Action</i>	<i>Should Have Been Grade CPS CL 26</i>	<i>Annual Salary</i> \$
<b>This chart illustrates reconstruction of pay based on within-grade increases compared to a promotion (movement to a higher grade) with an increase of 1.06%, pay that should have been effected in 1996</b>				
Pay Adjustmnt	Same	Jan 1998	CL 26/29	36,560
WGI	Same			
Pay Adjustmnt	Same	01/04/99	Same	37,869
WGI	Same	Jan 1999	CL 26/33	39,093
Pay Adjustmnt	Same			
WGI	Same	01/03/00	CL 26/33	40,956
WGI	Same	Jan 2000	CL 26/37	42,239
Pay Adjustmnt	Same			
WGI	Same	01/01/01	CL 26/37	43,782
WGI	Same	Jan 2001	CL 26/39	44,447

